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Strengthening State Resilience for the Prevention of Mass Atrocity Crimes

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Introduction

It is now ten years since the 2005 United Nations World Summit where states unanimously endorsed the responsibility to protect (R2P), as articulated in paragraphs 138-139.[1] Although its application in some cases has been controversial, one recurring theme that surfaced at this year's UN informal dialogue on R2P was that the vast majority of participating states shared a broad consensus on the principles underpinning the concept.[2]

In particular, many states endorsed Pillars One and Two, emphasising the greatest value of R2P lay in the prevention of the four atrocity crimes. They stressed the need for a better understanding of how R2P can inform processes at the domestic level, in order to manage challenges before they manifest into violence associated with the four crimes. As such, there has been a decisive shift toward questions of implementation, particularly in relation to prevention.

The broad commitment by UN member states to Pillar One in particular should be leveraged by the UN and member states as they consider the implementation phase of R2P.

Foregrounding such considerations, the 2013 Secretary-General's report, 'The Responsibility to Protect: State Responsibility and Prevention' made the observation that state-based prevention needed to be premised on strengthening resilience, particularly when risk associated with the four atrocity crimes is salient. In doing so, it proposed a risk/resilience framework to better understand how domestic actors manage challenges and navigate periods of stress. Understanding what such actors already do to strengthen resilience and mitigate risk provides a more nuanced understanding of why it is that some states experience mass atrocities while others –

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[1] 2005 UN World Summit Outcome Document

[2] A theme consistently reaffirmed in the 2015 UNGA Informal Interactive Dialogue on the Responsibility to Protect.

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with similar challenges – manage to avoid them. This then provides insights for prevention.

This briefing paper considers three areas of Pillar One implementation that are central to current discussions amongst member states:

- Resilience
- Accountability
- The focal point initiative[3]

Risk mitigation entails the means by which states manage the challenges associated with the four crimes. Accountability refers to the regulatory architecture that exists to ensure that states are held to their commitments entailed in R2P. The third area of implementation relates to the growing number of states who have appointed a national focal point for R2P, a position that has a dual function – to cast an atrocity prevention lens over domestic policies and processes, and to interact and confer with other national focal points at annual meetings and other informal gatherings.

We consider some of the key challenges inherent in each of these areas. Following this, we make a number of policy recommendations aimed to help develop and strengthen mechanisms that have an inhibitory effect on the perpetration of the four crimes.

Resilience

We know that risk factors associated with atrocity crimes occur far more frequently than the atrocities themselves. As Welsh and Sharma state, 'mass atrocity crimes remain high impact, yet low probability events.'[4] A better understanding of why risk does not escalate, or why risk de-escalates, has the potential to yield insights into how local and national actors mitigate such risk over time. The 2013 report, 'The Responsibility to Protect: State Responsibility and Prevention' offers a framework for understanding such processes of risk mitigation:

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[3] These themes were highlighted in Ban Ki-moon, *A Vital and Enduring Commitment: Implementing the Responsibility to Protect*, A/691/981, 13 July 2015. This Paper draws on interviews conducted by the authors in New York and Geneva in September 2015. Interviews were conducted with member states of the Cross Regional working groups on R2P in both NY and Geneva, UN staff, and international coordinating groups working on R2P.

[4] Jennifer M. Welsh and Serena K. Sharma, 'Operationalizing the Responsibility to Prevent', *APC R2P Brief*, 2/2, 2012, p. 1.

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Risk	Resilience
Discrimination/human rights violations	Constitutional protections
Targeting a specific group	Democracy
Capacity of armed groups/militia to commit atrocity crimes	National accountability mechanisms (criminalising atrocity crimes)
Circumstances that make it easier to commit atrocities	Transitional justice processes (where appropriate)
Lack of government capacity to prevent such crimes	Security sector reform
Perpetration of violence that is a precursor to atrocities	Measures that address actual or perceived inequalities[5]

Investigating why atrocities do not occur then becomes the basis upon which preventive strategies are premised. The objective then, is not to ameliorate root causes per se, but to better understand how various contextually specific national sources of resilience interact with risk, thus inhibiting risk escalation over time. By doing so, the 2013 report explores an area of research that until recently was almost completely overlooked by genocide scholars. Research into the causes of genocide and other mass atrocities has overwhelmingly focused on 'what goes wrong'.[6] While it is acknowledged that preconditions – or risk factors – have a tenuous causal connection with violent outcomes, the research has typically neglected to investigate what *other* outcomes such risk might generate. Yet it makes more sense to understand prevention on the basis of local and national processes of risk mitigation, that build resilience and stability over time. This approach to prevention puts domestic actors at the forefront of preventive work.

There are three broad policy implications for such an approach: early warning, applying an atrocity-prevention lens over a range of domestic policies, and (where necessary) offering an opportunity for Pillar Two initiatives to facilitate national sources of resilience already in existence.

Early warning

The risk/resilience framework offers a more nuanced approach to mass atrocity early warning. Many early warning frameworks based their assessment on an appraisal of risk alone, which can be problematic because it fails to account for why risk

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[5] Ban Ki-moon, *The Responsibility to Protect: State Responsibility and Prevention,* A/67/929-S/2013/399, 9 July 2013, pp. 3-11.

[6] Stephen McLoughlin and Deborah Mayersen, 'Reconsidering Root Causes: A New Framework for the Structural Prevention of Genocide and Mass Atrocities', in Bert Ingelaere, Stephan Parmentier, Jacques Haers and Barbara Segaert, (eds.), *Genocide, Risk and Resilience: An Interdisciplinary Approach* (Basingstoke: Palgrave Macmillan, 2013).

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escalates in some cases, but not in others. Often the salient factors that may be crucial in understanding out risk escalates to dangerous levels is the extent to which local and national factor can inhibit risk. As Witold Mucha points out, early warning analysis based on an assessment of risk factors fails to take into account the question of why violence, and risk, does not always escalate. To counter this, Mucha argues that risk assessment needs to better understand the role that local and national actors play in mediating conflicts and reducing tensions.[7]

Indeed, risk assessment approaches utilized by the UN are beginning to incorporate domestically driven inhibitory factors. The Office of the Special Adviser for the Prevention of Genocide, and the Special Adviser for the Responsibility to Protect, recently released a framework of analysis for assessing mass atrocity early warning. It incorporated the 'absence of mitigating factors' as one of the key signs of impending atrocities. Within this category, it includes such factors as the lack of a strong civil society, and the 'limit or lack of empowerment processes, resources, allies or other elements that could contribute to the ability of protected groups, populations or individuals to protect themselves.'[8] This particular risk factor allows for the opportunity to better understand how and why domestic sources of resilience – which mitigate risk – lose strength in high-risk environments.

Atrocity prevention lens[9]

The Secretary-General's risk/resilience framework offers a means for domestic actors to cast a preventive lens over existing policies and strategies. This fosters a better understanding of the impact that such processes may have in relation to the long-term risk of mass atrocities, as well as identifying key actors and strategies that have had an inhibitory effect on such risk.

For example, devising policies and strategies with risk mitigation in mind has become intrinsic to the Rwandan government, post-genocide. Its discontinuance of ID cards, and the changing of vehicle number plates (to no longer identify province) are examples of actions aimed at reversing the previous tendency toward stigma based on ethnic identity. Rwanda's Ministry of Education, in partnership with the Aegis Trust, developed a nationwide peacebuilding education program, aims at

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[7] Witold Mucha, 'The Next Spring is Certain to Come – and Certain to be Missed: Deficits in Conflict Prevention Research', *Global Responsibility to Protect* 6/4: 382-406 (2014).

[8] United Nations Secretariat, 'Framework of Analysis for Atrocity Crimes: A Tool for Prevention', available at: http://www.un.org/en/preventgenocide/adviser/pdf/framework%20of%20analysis%20for%20atrocity%20crimes_en.pdf, accessed 4 July 2015.

[9] For more on the application of an atrocities prevention lens, see, Alex J. Bellamy, 'Mass Atrocities and Armed Conflict: Links, Distinctions and Implications for the Responsibility to Prevent', *The Stanley Foundation, Policy Analysis Brief*, (2011).

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transcending past identity-based divisions.[10] Incorporating narratives that foster an inclusive identity, reduces the likelihood of future identity-based discrimination and exclusion, and builds a more resilient society.

In Ghana, the National Peace Council has developed mechanisms for the prevention, management and resolution of conflict. Its broad and inclusive membership provides it with the capacity to mediate in local and regional disputes. In addition, its independence from government allows it to conduct oversight of government policy and behaviour.[11] The National Peace Council strengthens resilience through closely monitoring situations of tension, and facilitating dispute resolution where necessary.

Such mechanisms may also be instructive for other countries facing similar challenges. While risk in every country is context specific, the experiences of countries like Ghana and Rwanda may yield insights that could be tailored to particular contexts. However, at present, we have a limited understanding of why it is that some countries manage to avoid atrocities crimes despite risk. What is needed is a more systematic understanding of the relationship between risk and resilience in a range of contexts – from low-risk to high-risk countries. While the need for prevention is clearly greater in countries displaying high levels of risk, often the greatest insights for prevention come from countries of low or moderate risk.

Pillar Two

By creating a framework to better understand how local and national actors mitigate the risk of mass atrocities offers a strong premise upon which international assistance – where needed – can be based. Devising international assistance on the basis of understandings of domestic sources of resilience provides an opportunity for external actors to further build on areas of strength. The Secretary-General's 2014 report on R2P, 'Fulfilling our Collective Responsibility: International Assistance and the Responsibility to Protect' also stresses the need for international assistance to be tailored to already-existing areas of strength within states.[12]

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[10] Reliefweb, 'Peacebuilding in Rwanda Goes Mobile', 13 May 2013, available at: http://reliefweb.int/report/rwanda/peace-building-rwanda-goes-mobile.

[11] Jaclyn D. Streitfeld-Hall, 'Preventing Mass Atrocities in West Africa', *Global Centre for the Responsibility to Protect Occasional Paper Series,* 6, September 2015, p. 8.

[12] Ban Ki-moon, *Fulfilling our Collective Responsibility: International Assistance and the Responsibility to Protect*. A/68/947-S/2014/449, 11 July 2014, p. 5.

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Accountability

Another way of strengthening resilience is to bolster national accountability mechanisms. R2P is a framework that brings together existing obligations in international law, including International Humanitarian Law, International Human Rights Law, International Criminal Law, International Refugee Law and treaties such as the Convention on the Prevention and Punishment of the Crime of Genocide.[13] While R2P is not a legal instrument in and of itself, an important step towards implementation is to endorse these international laws and treaties, and to incorporate them into statutory law at the domestic level.

There are two ways that accountability is currently being strengthened within states. First, some member states are extending their foreign policy endorsement of R2P to the workings of the UN Human Rights Council (HRC). The second is through the strengthening of domestic law in compliance with international law.

The Human Rights Council

Direct accountability of states for fulfilling their Pillar One responsibilities has gained an increasing institutional focus in the HRC. There is a strong link between human rights accountability and preventing the four atrocity crimes. Human rights violations are often precursors to atrocity crimes, a fact acknowledged in the 2015 Human Rights Council Resolution on the Prevention of Genocide.[14] Thus complying with human rights is an effective strategy for prevention.

There are two ways to envisage the potential role of the HRC in promoting R2P Pillars One and Two:

1. Promoting capacity building and resilience within states through recommendations of the HRC, particularly through the Universal Periodic Review.
2. Early warning, through the reporting of widespread human rights violations.

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[13] See, for example, Maria Banda and Jennifer M. Welsh, 'International Law and the Responsibility to Protect: Clarifying or Expanding States' Responsibilities?' *Global Responsibility to Protect*, 2/3: 213–31 (2010); Sheri P. Rosenberg, 'Responsibility to protect: A framework for prevention.' *Global Responsibility to Protect*, *1*, 442-477 (2009); Carsten Stahn, Responsibility to protect: Political rhetoric or emerging legal norm? *The American Journal of International Law*, *101*/1: 99-120 (2007); and Ekkehard Strauss, 'A Bird in the Hand is Worth Two in the Bush—On the Assumed Legal Nature of the Responsibility to Protect', *Global Responsibility to Protect*, *1*: 291-323 (2009).

[14] Human Rights Council, A/HRC/28/L.25, Paragraph 28 *Prevention of Genocide,* 23 March 2015.

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The HRC has the potential to strengthening the UN's capacity for early warning in relation to the four atrocity crimes. Although human rights monitoring covers wider terrain than the risk factors associated with these four crimes,[15] widespread violations of human rights – particularly those that go unpunished – are often a salient indicator of impending atrocities.[16] The HRC operates as the most effective institutional site for monitoring human rights violations that exists at the international level that could be used to identify these specific risk factors. Mechanisms within the HRC, which are useful for early warning, include the following:

- Special rapporteurs on country and thematic issues;
- Commissions of inquiry and fact finding missions;[17]
- The Universal Periodic Review (UPR);
- Treaty monitoring bodies;
- Regular country reports (which already monitor and report on significant R2P related cases).

There are a number of issues still impeding the utilisation of these existing mechanisms more formally as effective R2P prevention mechanisms.

First, consensus by states still needs to be reached as to whether R2P is indeed an issue for the HRC, or whether it remains the concern of the Security Council and General Assembly only. Proponents of engaging existing HRC mechanisms to prevention link the systematic and widespread violations that it identifies as central to Pillar One duties of states, making the HRC more effective than the Security Council and General Assembly for detecting, pre-warning, and initiating preventive action for potential atrocity crimes.

Second, consensus is still being reached among proponents as to which, and how existing mechanisms should be used specifically for R2P. While the role of the special procedures clearly has the most effectiveness in identifying and flagging immediate risk factors, the Universal Periodic Review only occurs every four years. While the UPR may serve to mainstream an atrocity prevention lens in human rights reporting processes and thereby facilitate capacity building within states, the UPR itself is not likely to be an effective early warning mechanism for imminent risk of atrocity. There are also some actors who feel that including R2P into the UPR

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[15] United Nations, *Framework of Analysis for Atrocity Crimes.*

[16] Alex J. Bellamy, 'Mass Atrocities and Armed Conflict: Links, Distinctions and Implications for the Responsibility to Prevent', *The Stanley Foundation, Policy Analysis Brief*, (2011), p. 13.

[17] See for example, Office of the High Commissioner for Human Rights, (2014). *Report of the Commission of Inquiry on Human Rights in the Democratic People's Republic of Korea*, A/HRC/25/63, 7 February 2014.

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process may inhibit cooperation rather serve as a more effective self-regulating and accountability procedure, therefore compliance is likely to be a challenge in pursuing this avenue.

A third challenge associated with engaging the HRC on atrocity prevention further is the need for a more specific mechanism to link early warning and advice on potential atrocity crimes that are already regularly forthcoming,[18] to timely and effective response through Pillars Two and the Three. In this case more flexible and informal working methods may need to be created within the HRC to bypass cumbersome formal avenues that reduce the speed and effectiveness for responding specifically to atrocity crimes.

Strengthening domestic law in compliance with international law

Beyond the work of the UN bodies, there a numerous national processes that states can pursue to enhance accountability. The Secretary-General's 2015 report, for example, emphasises the need for states to ratify the major human rights treaties, and the Rome Statute including membership in the International Criminal Court.

In addition to ratifying the relevant international law, the OHCHR (A/HRC/30/20, 2015) has put forward a series of recommendations for strengthening national human rights capacity within states.

The OHCHR recommends that all states do the following:

- Implement internal processes for regular and systematic review and new and existing legislation for human rights compliance,
- Develop effective redress mechanisms for populations, particularly through the establishment of strong and effective National Human Rights Institutions (NHRIs).
- Facilitate a 'protective and enabling environment in law and practice' (A/HRC/30/20, 2015: p.8) for civil society organisations,
- Create human rights regulation of private actors,
- Systematise human rights education across core security and governance institutions,
- Establish national human rights action plans, or action plans on specific thematic issues followed up by human rights impact assessments, data collection and analysis of statistics,
- Develop human rights indicators to facilitate monitoring.
- Develop processes that foster stronger transparency and monitoring of states in their follow up to recommendations of the HRC.

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[18] Office of the United Nations High Commissioner for Human Rights, *The Role of Prevention in the Promotion and Protection of Human Rights,* A/HRC/30/20, 16 July 2015.

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While these recommendations pertain to improving state resilience through broad strengthening of state capacity in human rights implementation, states should also be conscious of the need for the specific risk factors for atrocity crimes applying an atrocity prevention lens across these accountability mechanisms (the 2014 Framework of Analysis is a useful guide in this regard). To this end, the efforts by Denmark serve as a benchmark for other countries interested in promoting and implementing R2P at the domestic level. The Danish government is currently reviewing its internal governance capacity for atrocity prevention, assessing its existing foreign policy and development assistance programs, and creating a National Action Plan for R2P to enhance its Pillar One prevention capacity, and Pillar Two assistance responsibilities.

Fostering Horizontal Networking – R2P Focal Points

The third key opportunity for R2P implementation is the national focal point initiative. A national focal point is usually a designated member of a government department, who has the capacity to draw attention to a state's policies and strategies related to atrocity prevention. As the 2013 report describes, 'focal points can help to coordinate national efforts to mainstream and operationalize the responsibility to protect, which can spur the establishment of national atrocity prevention action plans tailored to the national context.'[19] The risk/resilience framework in the report can help facilitate such work by providing a lens over activities already occurring, which have as one of their characteristics, an inhibitory effect on mass atrocity risk.

Currently there are fifty-one assigned focal points. Since 2010 there have been six annual meetings, where the focal points discuss various challenges related to the prevention of mass atrocities.[20] A recent initiative includes regional meetings, the first of which was held in Slovenia in 2013, and attended by European focal points. The key discussion of the meeting was on how countries within Europe could implement R2P and both nationally and internationally.[21]

One of the opportunities that arise from these meetings is the sharing and disseminating of insights related to mass atrocity prevention. Impromptu discussion encourages debate on the nature of challenges that countries currently faced, and

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[19] Ban Ki-moon, *State Responsibility and Prevention*, p. 13.
[20] Global Centre for the Responsibility to Protect, 'R2P Focal Points', available at:
http://www.globalr2p.org/our_work/r2p_focal_points.
[21] Ibid.

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ways that various countries have dealt with similar or related challenges. In this way, the focal points meetings provide a forum for insights about prevention to be shared amongst equals.

To date, the role that focal points play fall into two major categories. For some countries, the national focal point is a foreign policy initiative – part of the promotion of R2P at the international level. For others, the role of the national focal point is more inwardly focussed, particularly in contexts where risk mitigation is a strong priority. Often the two priorities are not mutually exclusive. Appointing an R2P focal point as part of a country's foreign policy can be borne out of particular historical circumstances that may have once been characterised by human rights violations and mass atrocities, even if such concerns are no longer salient.

Nevertheless, as the Secretary-General's 2013 report points out, no country is entirely immune to risk. With that in mind, all countries contain insights for prevention, which could be of benefit to others.

The unique forum of the focal points meeting is that it shifts the discussion of mass atrocity risk away from spotlighting a few areas of grave concern, to one where there is an informal space to share lessons learned with member states who may be 'navigating through periods of stress.' As such, there may be benefit in some states broadening the remit of the R2P focal point beyond foreign affairs.

Recommendations

While controversy still surrounds the application of Pillar Three in some circumstances, an opportunity to deepen the growing consensus on R2P principles exists through focussed attention on the implementation of Pillar One. This paper recommends that actors should harness the broad-based support among states specifically in the areas of prevention and state protection capacity by embracing a risk/resilience framework.

This approach creates opportunity in a number of ways. First, it bridges the international-domestic divide in R2P debates; no state is immune to risk and therefore a risk/resilience framework requires all states to conceptualise R2P as both internal and external responsibilities. By applying the same standards and processes of implementation across the UN member states, a stronger foundation for promoting R2P in practice can be provided.

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Second, fostering a culture of horizontal networking through the Focal Point initiative, and regional initiatives, has already proven to increase the dissemination of success stories of risk mitigation and prevention. For example, Ghana's experience with the establishment of its National Reconciliation Committee, offers a model of prevention that demonstrates that local and national actors can indeed be the key players in long-term processes of risk mitigation and resilience building. It provides a glimpse of a broader range of insights that can be gained by taking stock of experiences from a range of risk scenarios, including low, moderate and high. Promoting greater information sharing through bilateral and international forums will also increase our knowledge of the kinds of contexts where building resilience mitigates risk over the long term, and prevents the onset of atrocity crimes when risk levels are high.

Third, states need to commit to an embrace of both the internal and external dimensions of R2P responsibilities, including more systematic compliance with existing accountability mechanisms in the Human Rights Council, to support the implementation phase at large.

Specific Recommendations to states on Pillar One and Pillar Two implementation:

Human Rights
- Adhere to the recommendations of OHCHR on the promotion and protection of human rights across the range of national processes required to support domestic resilience towards human rights violations at large
- Integrate an R2P/atrocity prevention lens into the Universal Periodic Review Process – both as part of recommendations for other countries under review, as well as each state's own self-reportage process.
- Promote the inclusion of an atrocity prevention lens in the working of the HRC special procedures and treaty mechanisms.
- Proponents of R2P should *exemplify* the kind of participation they envisage from other states – they must embody a willingness to strengthen their own accountability mechanisms

Domestic processes of risk/resilience
- Conduct an internal review of government ministries and create a National Action Plan to ensure that atrocity prevention is mainstreamed throughout domestic policy and institutions.
- From such a review, develop clarity around how domestic processes of resilience strengthening could inform the work of focal points. It could also foster an understanding of how focal points inform domestic processes of risk/resilience.

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Focal Point

- Appoint a national R2P Focal Point
- Ensure that the Focal Point has appropriate access and influence within their respective ministries to promote institutionalisation of atrocity prevention across security, governance and rule of law sectors, and protect and promote civil society for fostering domestic resilience.
- National FPs to utilize both domestic and foreign-policy priorities during participation in FP meetings and other international forums
- Facilitate discussions of atrocity-prevention challenges in other countries by demonstrating how such questions are universally relevant, and drawing on the experience of particular states that have experienced similar challenges

R2P as foreign policy priority

- Conduct an internal review of government ministries and create a National Action Plan to ensure that atrocity prevention is mainstreamed throughout foreign policy, development assistance and defence operations.
- Such a review should recognise commitments to building capacity of partner states to consider where relevant work is already being done to promote improve atrocity prevention capacity of states. For example, existing programs in the areas of capacity building, rule of law programs, security sector reform, conflict resolution, peacebuilding, and support for transitional justice mechanisms, could be leveraged at minimal cost of resources to incorporate an explicit atrocity prevention lens and strengthen early warning capacity.
- All states should be attuned to elements of risk in other states, particularly in their region, and should build trustful and cooperative relations that would be conducive to Pillar Two assistance if required in the future.
- Familiarisation with the 2014 Atrocity Prevention Framework of Analysis, and tracking risk trajectories in the region through a dedicated institutional site, would be possible ways of promoting a more systematic approach to atrocity prevention throughout the work of relevant government departments.
- When tracking risk, attention should be paid to the level and intensity of human rights violations to complement other genocide/conflict risk lists. A reliance on genocide/conflict risk lists alone may not fully capture all episodes of imminent atrocity crimes where systematic and widespread human rights violations serve as a more appropriate indication of imminent atrocity crimes (as was the case in Libya)
- Tracking trajectories of risk in countries with *varying* degrees of risk should remain in purview for successful investment in prevention. Understanding why risk remains low in some countries but not in others is as important as responding to challenges in countries of high risk, whose circumstances may require assistance through Pillar Two strategies, or the application of strategies associated with Pillar Three.

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Resourcing

- Each of the recommendations above need to be backed by both strong political will and corresponding resourcing to enable the relevant actors, including state-based, multilateral organisations, civil society and faith-based organisations, to strengthen resilience for atrocity prevention across the spectrum of social, political, and security fields.

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