



General Assembly

Distr.: General
1 March 2018

Original: English

Human Rights Council

Thirty-seventh session

26 February–23 March 2018

Agenda item 3

**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Joint study of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence and the Special Adviser to the Secretary-General on the Prevention of Genocide^{*,}**

Note by the Secretariat

The Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence and the Special Adviser to the Secretary-General on the Prevention of Genocide submit their joint study “on the contribution of transitional justice to the prevention of gross violations and abuses of human rights and serious violations of international humanitarian law, particularly to the prevention of genocide, war crimes, ethnic cleansing and crimes against humanity, and their recurrence,” pursuant to Human Rights Council resolution 33/19.

* The present document was submitted late to the conference services without the explanation required under paragraph 8 of General Assembly resolution 53/208 B.

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Contents

	<i>Page</i>
I. Introduction	3
A. Atrocity prevention: definitions.....	3
B. The preventive potential of transitional justice	4
C. Persisting main challenges to effective atrocity prevention	5
D. Special Rapporteur's and Special Adviser's work on atrocity prevention	6
II. Preventive Initiatives in the Institutional Sphere	7
A. Governance Institutions	7
B. Civil Society Institutions	13
III. Interventions in the domains of culture and of personal dispositions	15
IV. Conclusions and recommendations.....	17

I. Introduction

1. The present report is submitted pursuant to Human Rights Council resolution 33/19, requesting the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence and the Special Adviser to the Secretary-General on the Prevention of Genocide “to prepare a joint study on the contribution of transitional justice to the prevention of gross violations and abuses of human rights and serious violations of international humanitarian law, particularly to the prevention of genocide, war crimes, ethnic cleansing and crimes against humanity, and their recurrence.”

2. The two experts were asked to reflect in the study views of States, relevant United Nations (UN) mandate holders, UN agencies, funds and programmes, in particular the Office of the United Nations High Commissioner for Human Rights (OHCHR), intergovernmental organizations, national human rights institutions, non-governmental organizations and other relevant stakeholders (see Annex).

3. The Special Rapporteur and the Special Adviser welcome the opportunity to collaborate in articulating views on preventing atrocity crimes, a longstanding issue of concern to the entire UN system. It (re-)gained prominence due to emphasis on prevention by the new Secretary-General, underlining the vast resources expended responding to crises rather than preventing them. He has stated that “[p]revention is not merely a priority, but *the* priority,”¹ with atrocity prevention at the heart of his overall prevention agenda.²

A. Atrocity prevention: definitions

4. The purpose of this study is to highlight the contribution transitional justice can make in preventing gross violations of human rights and serious violations of international humanitarian law, particularly genocide, war crimes, ethnic cleansing and crimes against humanity.

5. The term ‘atrocity crimes’ is used as a shorthand for these four categories of acts. Genocide, crimes against humanity and war crimes are crimes under international law.³ While ethnic cleansing is not an explicitly defined category of international crime, it includes acts that are serious violations of human rights and humanitarian law that may amount to crimes against humanity, genocide or war crimes.⁴ Hence, ‘atrocity prevention’ refers to the prevention of these four types of acts.

6. Atrocity prevention is closely related to conflict prevention; however, they are not the same. While the risk of atrocity crimes increases significantly during armed conflict, and is further elevated if the conflict takes place within a State with a repressive governance regime, it should be emphasised that genocide and crimes against humanity can also take place during peacetime. What distinguishes atrocity crimes is the targeting of specific groups, sometimes with cyclical reprisals between communities. Hence, atrocity prevention requires a specific approach that is complementary to but distinct from a pure conflict prevention approach.

7. Unlike genocide and war crimes, which are recognized and prohibited under international criminal law, there is no convention on crimes against humanity. The definition of crimes against humanity was developed under customary law and codified in the statutes of the International Criminal Tribunals for the Former Yugoslavia and for Rwanda, in addition to the Rome Statute of the International Criminal Court.⁵ Since 2014, the International Law Commission has been preparing a draft convention.⁶ Finalising and

¹ See <http://www.un.org/apps/news/story.asp?NewsID=55935#.WZtN-rxB-ew>.

² A/71/1016-S/2017/556.

³ Convention on the Prevention and Punishment of the Crime of Genocide, Article 2; 1949 Geneva Conventions; 1977 Additional Protocol I.

⁴ Framework of Analysis for Atrocity Crimes, UN Office on Genocide Prevention and the Responsibility to Protect, fn1, at: http://www.un.org/en/genocideprevention/documents/publications-and-resources/Framework%20of%20Analysis%20for%20Atrocity%20Crimes_EN.pdf.

⁵ Rome Statute of the International Criminal Court, article 7.

⁶ http://legal.un.org/ilc/guide/7_7.shtml#top.

adopting the draft convention would demonstrate the commitment of the UN to atrocity prevention.

B. The preventive potential of transitional justice

8. The preventive potential of transitional justice is not always recognized, perhaps due to the tendency to regard transitional justice mainly as a past-oriented policy. This neglect is surprising, as the promise of ‘never again’, so powerfully reflected in the UN Charter, has always been an important motivation for implementing transitional justice measures.

9. Even if transitional justice were exclusively interested in redress, redress is important on many levels: first, effective redress is a right. Legally, lack of redress is a violation in its own right, a ‘denial of justice.’ Morally, redress recognises the suffering of the victims and their families, and contributes to restoring (to some extent) their dignity. Practically, redress is important from a preventive perspective, given the patterns of violations.

10. At the macro level, one strong predictor of violence and atrocity crimes, is a history of serious violations or atrocity crimes, as the Framework of Analysis for Atrocity Crimes developed by the Office of the Special Adviser underlines.⁷ Additionally, countries with recent experience of armed conflict are more prone to return to armed conflict than others.⁸

11. At the micro, individual level, while acknowledging that the ‘cycle of violence’ image distorts more than it illuminates,⁹ it is telling that many ‘instigators’ of violence have themselves been exposed to violence. Hence, while transitional justice should not be conceived *primarily* as a ‘peace-making’ instrument, numerous indicators demonstrate that it can contribute to sustainable peace and security by helping to break cycles of violence and atrocities, delivering a sense of justice to victims, and prompting examinations of deficiencies in State institutions that may have enabled, if not promoted, those cycles.

12. One contribution made by transitional justice is to ‘unpack’ the notion of redress, recognizing that criminal justice alone is an insufficient response to atrocities.¹⁰ In each of its constitutive pillars (truth, justice, reparation and guarantees of non-recurrence), transitional justice has made contributions to the entrenchment, operationalization, and realization of corresponding rights. Thus, with criminal justice, transitional justice has contributed to the entrenchment of the right to justice by developing techniques for coping with amnesties, by elaborating prosecutorial strategies, and by diversifying venues where criminal justice is sought (including through ‘hybrid’ and international courts). Notably, transitional justice was instrumental in entrenching and operationalizing the right to truth and the right to reparations, which were only aspirations prior to the establishment of transitional justice as ‘a field’ of theory and practice: the former through truth seeking tools such as truth commissions, commissions of inquiry and accessible archives; the latter mainly through the establishment of massive administration programmes offering ‘complex’ packages of benefits, not just economic compensation.

13. The forms of redress characteristic of transitional justice are meant to be ‘corrective’ not only as a response to harms but, more broadly, in a context in which such violations were possible to begin with. Each component of transitional justice can contribute to preventing further atrocities: criminal justice by: asserting accountability, thereby generating a deterrent effect; signalling that no one is above the law, important for social integration; confronting the most violent manifestations of discrimination, marginalization and ‘horizontal inequalities’; and disrupting criminal networks responsible for atrocities.

⁷ Fn 4, risk factor 2.

⁸ Skarstad/Strand, "Do Human Rights Violations Increase the Risk of Civil War?" *International Area Studies Review* (2016), pp. 107-130; Cingranelli, "Human Rights Violations and Violent Internal Conflict" (forthcoming) in UN-World Bank? *Pathways to Peace*.

⁹ Walker, "The Cycle of Violence," *Journal of Human Rights*, 5 (2006): 81-105.

¹⁰ A/HRC/36/50/Add.1.

14. As the Framework of Analysis for Atrocity Crimes underlines, lingering perceptions of injustice, failure to recognise crimes committed, and continued discrimination against communities, are risk factors that indicate the potential for further violence and atrocities.¹¹

15. Truth-telling contributes to atrocity prevention through public accounting of the magnitude of crimes committed (often unknown to those ‘unaffected’) and the underlying motives, means and structures used to commit them, as well as by formulating recommendations with a preventive intent, particularly measures promoting reconciliation and transforming discriminatory structures. Reparations contribute by recognising victims as rights-bearing citizens, enabling them to claim redress for past and future violations more assertively. While redress is triggered by a past violation, it is meant to ensure that the violation has present and future consequences.

16. The fourth constitutive element of a comprehensive transitional justice policy, guarantees of non-recurrence, is by its nature forward-looking and preventive. The Special Rapporteur has presented three reports on this notion arguing that whereas truth, justice, and reparation refer primarily to *measures*, the concept of guarantees of non-recurrence refers primarily to a *function* and that function is, precisely, prevention. Furthermore, the reports argue that while doctrinally guarantees of non-recurrence may be the least developed pillar of transitional justice, *practically*, particularly interpreted from the perspective of prevention, there are vast amounts of knowledge and expertise on the topic (albeit fragmented institutionally and otherwise).¹²

C. Persisting main challenges to effective atrocity prevention

17. Despite the wealth of available expertise and tools, the international community is still failing to prevent atrocity crimes and we can, and must, improve. Reasons for the inconsistent record include: lack of political will - a commitment in words to atrocity prevention has not been translated into investment in concrete action, failure to take early and timely action in response to warning signs and the disaggregation or ‘siloization’ of knowledge and expertise.

18. In fact, we know a lot about prevention, whether of conflict or of atrocities. Our knowledge, however, is scattered across fields, disciplines, and communities of practice, and is therefore rarely deployed broadly, systematically and in an inter-disciplinary manner.

19. Some of the effective preventive measures are not usually categorized as tool for atrocity prevention. For example, at the macro level, general processes of institutionalization (including processes of State-formation¹³) or constitutionalization, the establishment of structures guaranteeing more equitable economic opportunities¹⁴, or education reform, have not traditionally appeared under the heading of ‘atrocity prevention’ or been considered elements of prevention policy.

20. Similarly, at the meso level, initiatives aimed at strengthening judicial independence or establishing effective civilian oversight over security forces, the adoption of community policing strategies, or processes strengthening social bonds at the micro level have, in many contexts, been crucial in preventing atrocities. Yet again, they are not normally categorized atrocity prevention tools.

21. Knowledge and expertise about prevention have also suffered from various forms of reductionism, three of which are mentioned here:

¹¹ Fn 4, p. 2.

¹² A/HRC/30/42; A/70/438; A/72/523.

¹³ Pinker, “Rates of Violence in State and Non State Societies,” *Better Angels of our Nature* (2011), pp. 47-56.

¹⁴ The UN-Worldbank’s *Pathways to Peace* puts great emphasis on the conflict-generative potential of “horizontal inequalities,” showing how marginalizing whole groups from access to economic opportunities, is not only a human rights violation itself, but correlates strongly with conflict and violence.

(a) Prevention work has primarily focused on crisis-prevention and great efforts and resources have been devoted to creating early warning systems. While such systems are undoubtedly important, the triggering of an ‘early warning’ system indicates that early preventive work has either not taken place or has failed.

(b) Much prevention work has concentrated on the role of the State in reforming institutions, relegating the contribution of civil society to the familiar functions of advocacy, monitoring, or reporting. However, the presence of an organised, knowledgeable, strong and representative civil society (see chapter II.B. below), and a free, diverse and independent media able to operate freely would significantly reduce the risk of atrocity crimes.¹⁵ This becomes particularly evident in situations where repressive regimes restrict or control civil society and individual actors, without association and communication with and to others from the outside world, are an easy target.

(c) Sustainable atrocity prevention is not merely a matter of clever institutional engineering. It requires a broader approach that promotes societal change, the internalization of cultural and individual dispositions related to tolerance, solidarity, and respect for “the other.” While true that neither culture nor personal dispositions respond to policy interventions as institutions do, this does not mean they are either immutable or indifferent to institutional initiatives. However, cultivating those dispositions requires a more long-term (re-)thinking than currently undertaken.

D. Special Rapporteur’s and Special Adviser’s work on atrocity prevention

22. The offices of both the Special Rapporteur and Special Adviser have been working on atrocity prevention independently, but along converging lines. This section highlights some of their main initiatives.

23. In the ‘Framework of Analysis for Atrocity Crimes’, the Special Adviser lists among core risk factors a history of atrocity crimes combined with a record of impunity and weak State structures. Societies with legacies of atrocity crimes that have been inadequately addressed are more likely to resort again to violence.¹⁶ In his annual reports on the responsibility to protect, the Secretary-General has provided policy options for atrocity prevention and underlined the distinction between *structural* prevention – seeking to reduce the vulnerability of societies to atrocities over an extended timeline – and *operational* prevention, aiming to avert specific threats of atrocities or to stop, or at least de-escalate, ongoing atrocities.¹⁷

24. While noting the various instruments available for operational prevention at the national, regional, and international levels, the Secretary-General supports ‘upstreaming’ prevention, stressing structural prevention. This is not merely in recognition of constraints faced by operational prevention, arising when actors on the ground already believe viable alternatives to violence are too costly. The emphasis on structural prevention comes also in recognition that atrocity crimes are not single events that unfold overnight, but interconnected processes that developed over many years. Acting early increases opportunities to address latent risks before escalation, and frequently enhances the effectiveness of tools to address these risks.

25. Structural prevention aims to strengthen a society’s resilience to atrocity crimes by removing core causes of grievances and building structures that contribute to halting atrocities. Consequently, measures to build resilience should focus particularly on promoting effective, legitimate and inclusive governance through developing participatory and accountable political institutions, strengthening respect for the rule of law and equal access

¹⁵ Fn 4, p. 15.

¹⁶ Fn 4, p. 11.

¹⁷ A/65/877-S/2011/393, para. 21. These two categories were first developed in the field of conflict prevention. See Carnegie Commission on Preventing Deadly Conflict, *Preventing Deadly Conflict: Final Report* (1997), 39-104.

to justice, and establishing mechanisms for fair and transparent management of economic resources. Particular attention should be paid to addressing horizontal inequalities, protecting rights of minorities, and promoting integrated institutions.¹⁸

26. Other critical measures to strengthen resilience include building a professional and accountable security sector by establishing robust oversight mechanisms; establishing impartial institutions for overseeing political transitions, particularly an impartial and competent electoral commission; strengthening capacities of national structures to uphold good governance, human rights and the rule of law including legislative bodies, the judiciary and national human rights institutions; promoting local capacity to resolve conflicts, particularly informal mechanisms to foster dialogue and mediation; education promoting tolerance and the value of diversity; promoting a robust and diverse civil society; fostering an independent and pluralistic media, and strengthening media capacity to counteract hate speech; and, tellingly, building comprehensive and legitimate transitional justice processes that acknowledge past grievances and ensure accountability for past atrocities.¹⁹

27. The Special Rapporteur, in his three reports related to prevention, has presented an extended argument in favour of a ‘framework approach’ to prevention. The main objective is to provide content and systematicity to the notion that prevention work needs to be broadened and upstreamed, a notion on which there seems to be consensus. The content is provided by describing some elements included in a comprehensive prevention framework, such as constitutional, judicial, legal and security sector reforms. The framework aims to help break down the silos marking fragmentation of knowledge and expertise, and combat the different aforementioned types of reductionism. It is particularly interested in preserving the rightful place of civil society in any atrocity prevention policy. The framework approach also demonstrates that truly effective prevention is not merely a matter of ‘institutional engineering,’ but also of changes in culture and personal convictions. This report takes the opportunity to explore in more detail some of these ideas.

II. Preventive Initiatives in the Institutional Sphere

A. Governance Institutions

1. Constitutional reform

28. Constitutional reform processes are rarely linked to atrocity prevention. The two experts use the term ‘constitutionalism’ to refer to the exercise of limited power in accordance with pre-existing rules and in an institutional arrangement that precludes the executive from being its own judge (that is, one involving separation of powers).

29. How can the preventive potential of constitutionalism be accounted for? It derives first from the very nature of constitutional power (at this level of abstraction not separate from the conceptual overlap between constitutionalism and the rule of law), that is, from the fact that constitutionalism constrains the exercise of power, and furthermore, that it constrains it by means of *laws*. Both conditions are significant. Constitutions establish and regulate the relationship between the different branches of government amongst which power is divided. Arguably, fragmented power is itself checked power, which itself has some preventive potential.

30. But the fact that power is constrained by means of laws is also important. Not every rule or norm, and not every combination of rules or norms, can count as laws. Laws must be capable of being obeyed – people must be able to be guided by them. While this may seem an inconsequential requirement, it forms the basis for some of the familiar attributes of laws, namely prospectivity or non-retroactivity, generality, and publicity, for without these attributes rules would lose the capacity to guide behaviour.²⁰ The generality requirement prevents individuals from being singled out for discriminatory treatment; the constraint on

¹⁸ A/67/929-S/2013/399, paras. 35-39; A/68/947-S/2014/449 paras. 41-42.

¹⁹ A/67/929-S/2013/399, paras. 40-55; A/68/947-S/2014/449, paras. 43-58

²⁰ Raz, “The Rule of Law and its Virtue,” in *The Authority of Law* (1979), 212-219.

retroactive laws protects individuals from the whims of power holders; and the publicity requirement allows individuals to form reasonable expectations about what is permitted and prohibited, and introduces a required rationality into law-making, and accountability into the exercise of power.

31. The formalist understanding of the rule of law helps to prevent some forms of arbitrariness, but not all, as scholars in post Nazi Germany, and the Truth Commissions in both post Pinochet Chile and post-apartheid South Africa extensively argued. Constitutionalism in general, and particularly, the new constitutionalism, is not exhausted by the commitment to a thin understanding of the rule of law as important as that may be in its own terms.²¹ The new model of constitutionalism includes a Bill of Rights and a specialized court in most cases ‘existing in its own constitutional space’ – separate from other courts, with its own mechanisms to guarantee independence,²² and often, as one institutional means for the promotion and protection of rights, including human rights ombudspersons or independent human rights institutions, among others.

32. In this respect, the new constitutionalism’s bills of rights are very different from older versions, which may have been nothing more than aspirational. A constitution with a bill of rights and the proper institutional arrangement for its enforcement, so ensuring that it is more than a rhetorical gesture, can have preventive effects well beyond the general advantages of the rule of law (including predictability) and of limited power—given the vast powers of the state, even limited power can do immense damage. This report cannot reproduce either the arguments or the evidence marshalled by various studies, including the 2011 World Bank’s World Development Report or the more recent UN-World Bank *Pathways to Peace* concerning the risks of both violence and rights violations posed by entrenched horizontal inequalities and other forms of marginalization. Upstreaming atrocity prevention work effectively includes measures to prevent, precisely, the entrenchment of these forms of inequality and marginalization. As the Special Rapporteur has argued in previous reports, there are constitutional changes that can express a more inclusive social contract. These would include removing discriminatory provisions from existing constitutions, as called for by many truth commissions and peace agreements, and introducing mechanisms of inclusion, among many other measures.²³ Since in many countries minorities are predominantly targeted for attacks, articulating clear and enforceable guarantees for minorities in bills of rights may offer some protection and de-incentivize both attacks on them and pre-emptive action by minorities.

33. In addition to the strict legal function of constitutions (“legal self-restraint”), constitutions also serve an important ‘expressive’ function.²⁴ Constitutions do not merely mirror already shared values, they articulate a vision of values that a society aspires to. Hence, there is a ‘utopian,’ normative dimension to constitutions, which helps to explain their integrative and preventive potential. The new constitutionalism with its institutional resources to enforce bills of rights typical of the post-war, draws a thick line between the past and the present, and establishes effective methods of redress. They are not merely a reaction to a problematic past, however, they also embody the aspiration to overcome it. Effective protections and guarantees, the wager is, enables greater social integration.²⁵

34. The 2013 report of the Secretary-General on the responsibility to protect underlines the link to the prevention of atrocity crimes, noting that, “Constitutional protections can contribute to preventing atrocity crimes by creating a society based on non-discrimination.

²¹ Report of the Chilean National Commission on Truth and Reconciliation, vol 1, pp. 120; vol. 2, chap. 4, pp. 860-862; Truth and Reconciliation Commission of South Africa Report, vol. 4, p. 105. Also A/67/368.

²² The creation of constitutional courts also provided an elegant solution to the difficulties of vetting the judiciary. See, Issacharoff, *Fragile Democracies: Contested Power in the Era of Constitutional Courts* (2015).

²³ A/HRC/30/42, paras. 62-67.

²⁴ Jakab, “The Two Functions of a Constitution” in: *Verfassungsgebung in konsolidierten Demokratien*, Bos/Pócza (2014), pp. 78–104.

²⁵ Grimm, “Integration by Constitution,” *International Journal of Constitutional Law*, 3, (2005), pp. 193-210; Häberle, *Verfassungsrecht als Kulturwissenschaft* (1998); Habermas, *Faktizität und Geltung* (1992).

Constitutional arrangements can be vehicles for accommodating distinct national concerns while guaranteeing the protection of fundamental human rights. Constitutions can recognize the diversity of a State and grant explicit protection to different populations, including cultural, ethnic or religious minorities. They can also ensure political recognition of diversity through the devolution of powers, including the establishment of territorial chambers to guarantee regional participation in State governance and the assignment of meaningful roles for regional administrations. Constitutions can provide for diversity in the composition of the State's administrative bodies, civil service, judiciary and security forces. While no diversity management model is perfect, constitutional arrangements have the potential to create the means to address political tensions, including those with a territorial or identity component.”

35. The integrative potential of constitutional reform processes, on which some of its preventive powers depends, is enhanced to the extent that the process of adopting and articulating constitutions and bills of rights is given as much attention as its outcome. To the extent that constitutions are supposed to frame a ‘social contract’ for a shared political project, thinking about the process in purely technocratic terms, as a matter for experts only, or worse, as an exercise that excludes sectors of the population, has proven again and again to lead to unsatisfactory results. One of the most ambitious participatory projects around a constitutional process was the one organized by the community liaison office established by the South African National Assembly for the process leading to the 1994 Constitution. It involved a massive education campaign on constitutional issues, mixing media (weekly TV and radio programs reaching ten million people), posters, brochures, and leaflets, a call-in phone line, the mailing of four and a half million copies of the draft constitution, and 486 face-to-face workshops targeting disadvantaged communities alone. An external evaluation determined that three-quarters of the South African people - about thirty million - had heard about the process, and nearly twenty million knew that they could make a submission on constitutional issues. This experience showed that it is possible to make participation meaningful and inclusive even on a large scale.²⁶

36. The preventive potential of constitutions is not mere theoretical conjecture. One World Bank commissioned study concludes that constitutionalism not only helps countries avoid violence to begin with, but helps them get out of violence when it happens: “Governments that are constrained by a formal constitution, and that follow the rule of law are much less likely to face renewed violence in any form. In fact, any measure that limits the government’s ability to act outside the law and unilaterally usurp power makes the government a more attractive negotiating partner, and offers combatants an alternative way out of war. This suggests that a heavier focus on political institution building rather than economic development may be the most effective way to resolve existing civil wars and could help reduce the rate at which these conflicts repeat themselves over time.”²⁷

37. This study has focused on constitutional reform as a useful preventive tool (as part of a more comprehensive prevention framework). There are other legal measures which are also important. In a previous report the Special Rapporteur has mentioned, for example, the ratification of international treaties. The Special Adviser has also repeatedly called on States to ratify and domesticate key instruments of international human rights law and criminal law. A recent study highlights how adopting ‘atrocities laws,’ – laws that domesticate the international commitments – doubles the likelihood of prosecutions at the national level for the relevant crimes.²⁸ When prosecutions can be said to have any preventive potential (not just through deterrence, but for example through the disarticulation of criminal networks), this is another example both of interventions in the sphere of institutions that have a preventive potential, but also of the need to incorporate these measures systematically.

38. Nevertheless, the Special Rapporteur and Special Adviser are gravely concerned that constitutionalism is seriously under attack through:

²⁶ Brandt/Cottrell/Ghai/Regan, *Constitution Making and Reform* (Interpeace 2011), Sect. 2.2, pp. 93-94 esp.

²⁷ Walter, “Conflict Relapse and the Sustainability of Post-Conflict Peace” WDR 2011 Background Paper.

²⁸ Berlin/Dancy, “The Difference Law Makes: Domestic Atrocity Laws and Human Rights Prosecutions,” *Law & Society Review*, 51 (2017), p. 560.

(a) efforts to undermine judicial independence by ‘packing’ courts (increasing the number of judges, particularly higher courts, to create majorities sympathetic to the executive) or manipulating judicial appointments, promotions, and arbitrary disciplinary procedures;

(b) limiting the functions and authority of judges, especially in constitutional courts so that there only remains an ‘empty shell’, creating the false impression of separate powers and concealing an executive that has no respect for *limited* power;

(c) taking parliamentary majorities to confer mandates for thorough constitutional reforms, ignoring the difference between constitutions and ordinary legislation, with the aim of concentrating executive power;

(d) eliminating presidential term limits without regard for the effect on (already shaky) separation of powers;

(e) disregarding not only judicial decisions or the judiciary more generally, but disrespecting the very idea of checks and balances and a rule of law-based society.

39. These trends not only undermine commitments repeatedly made by and to the international community,²⁹ but primarily betray the promise of democratic government made to their own people.

2. Security Institutions

40. The Special Adviser has long pointed to the heightened risk of atrocities caused by the proliferation of armed groups and ineffective, under-resourced, inadequately representative or absent security institutions. His Framework of Analysis underlines several factors associated with security institutions that increase the risk of atrocity crimes including, under the risk factor associated with weakness of state structures, “lack of effective civilian control of security forces,” and “absence of or inadequate external or internal mechanisms of oversight and accountability”; as well as indicators linked to a State’s capacity to commit atrocity crimes and to “enabling circumstances”³⁰.

41. In his 2013 report, the Secretary-General argued that security sector reform (SSR) processes can contribute to the prevention of atrocity crimes “by controlling the means to commit atrocity crimes and by deterring instances of misconduct or abuse.”³¹ In various reports, the Special Rapporteur has expressed concern about violations and abuses perpetrated both by State security actors and by non-state actors, particularly in areas of limited governance.³²

42. Effective SSR can help reduce atrocity risks and build resilience to atrocity crimes. Such a process should, *inter alia*, establish robust civilian oversight and strengthen internal discipline; promote the inclusion of personnel from diverse population groups; strengthen professionalism among security personnel; vet personnel to exclude identified perpetrators; provide training on international human rights law and IHL; and adopt operating procedures on the use of force and firearms.³³ The Special Rapporteur has elaborated on several aspects of SSR that he considered especially relevant to prevent recurrence, including some of the aforementioned measures.³⁴

43. The reform of security institutions is a key element of most transitional justice programmes and is often linked to accountability processes. Turning a blind eye on past atrocities signals that some perpetrators are above the law; discrediting security institutions with already low levels of civic trust. Not providing accountability effectively offers post-factum justification of past atrocities and breeds a (long-standing) culture of impunity in which atrocities may become “normalized”, rendering prevention significantly more difficult. Providing accountability for past atrocities, on the other hand, acknowledges

²⁹ GA Res/ 66/102; 59/201; /96; 59/201; HRC Res 19/36; 2004/30; 2003/36

³⁰ Fn 4, pp. 12, 14 and 16

³¹ A/67/929-S/2013/399, para. 44

³² A/HRC/36/50; A/70/438.

³³ A/67/929-S/2013/399; A/68/947-S/2014/449.

³⁴ A/70/438.

atrocities as acts that are not tolerable or tolerated, and that no one is above the law, whatever their status. Where there is accountability, populations can be hopeful that State institutions, which may have failed them in the past, will now protect them. In this way, accountability for past atrocities affirms the universal validity of basic norms and values.

44. Transitional justice can offer positive lessons about achieving some degree of accountability through criminal prosecutions. However, atrocities are not isolated incidents committed by a limited number of individuals, but system crimes that typically involve large numbers of perpetrators requiring a degree of organization, resources and skills. Generally, it is unlikely that all who are directly or indirectly responsible for atrocities will face criminal punishment. SSR can contribute to addressing this “impunity gap” by proposing options like vetting security sector personnel and removing from the security sector those officials who are responsible for atrocities. Vetting works by disabling networks that may be used to commit atrocity crimes.³⁵

45. However, vetting is tied to crimes already committed and not easy to carry out successfully, especially on a large scale.³⁶ Therefore, the Special Rapporteur in his report emphasized other measures that have a preventive potential, such as constitutionally defining the distinction between the external defence (military), internal public safety (police), and intelligence functions; rationalizing and “right-sizing” the security sector; narrowing military court jurisdiction; eliminating military prerogatives such as control over aspects of politics and the economy; and strengthening civilian oversight over security institutions.

46. It is to this last measure – strengthening civilian oversight over armed forces – that this study will pay particular attention, with the aim to highlighting its importance, illustrating some of the alternatives, and inviting further research both into better ways of doing prevention and into the empirical effects of preventive efforts. However, effective oversight over security institutions is only one part of what should be a comprehensive, context-specific framework encompassing a range of structural and operational measures.

47. Oversight over and accountability by *all* parts of the executive are part and parcel of what it means to exercise power in accordance with the rule of law in a constitutional regime. Given the monopoly over the use of force exercised by the security services, this is especially important. The almost complete monopoly that has been ceded in many places to the military, e.g., over most issues relating to security and defense, ought to be disputed for other reasons as well: the security and defense of a State are fundamental to the well-being of societies. However, it is unreasonable that the population (and their representatives) whom the measures are supposed to protect would not be involved in their oversight. Furthermore, security and defense typically consume large amounts of public resources and should be subjected to some degree of democratic deliberation in the same way as other parts of a national budget. Security budgets, however, are frequently shrouded in secrecy, which often invites inefficiencies, corruption and concealment of financing of various forms of human rights violations.

48. A significant number of countries where atrocities have been committed, and where risk of future atrocities is high, are States where even basic oversight mechanisms are weak or completely absent. Accountability and oversight, it has been found, are most successful if security institutions answer “to multiple audiences through multiple mechanisms”.³⁷ A combination of internal and external, formal and informal mechanisms has proven most effective in holding security institutions to account.³⁸ Hence, a combination of formal accountability mechanisms such as external oversight (parliamentary oversight committees, executive oversight, independent civilian complaint and review bodies, ombudsperson offices and judicial review) and internal rules and mechanisms (ethics codes, internal discipline and line management), along with strong informal accountability provided through

³⁵ De Greiff, “Transitional Justice, Security, and Development”, World Development Report 2011 (Background Paper 2010), 17-18. Also A/70/438, paras. 21, 23.

³⁶ A/70/438.

³⁷ Bayley, “The Contemporary Practices of Policing: A Comparative View”, quoted in Stone/Ward, “Democratic Policing: A Framework for Action”, *Policing and Society*, 10(15), 2000, p. 15.

³⁸ For details, DCAF, “The Contribution and Role of SSR in the Prevention of Violent Conflict”, 2017.

the scrutiny of non-governmental actors, such as the media, human rights organizations and other CSOs monitoring the security sector.³⁹

49. While important, internal mechanisms are forms of self-policing and therefore, in circumstances in which there are justified trust deficits (virtually all situations of heightened risk) they are insufficient. Guards cannot be expected to guard themselves entirely on their own. External oversight is therefore important. Independent civilian complaint bodies, ombudspersons, other national human rights institutions and judicial reviews are crucial. However, the focus here will be on one aspect of oversight, parliamentary oversight, and on one particular form of executive oversight, which has a broad, systemic scope and clear preventive potential.

50. The first form of civilian oversight mechanism this report will highlight is a Ministry of Defense. Many countries have established such a ministry, and some have even appointed civilian ministers of defense. Having a ministry of defense, and even a civilian *minister*, is not the same thing as having a civilian *ministry* of defense in which most of its staff, particularly in the senior positions, are civilians.

51. Ministries of Defense have the first responsibility for the articulation of proposals concerning budgets, national security strategies, personnel and force management, and acquisitions.⁴⁰ If the expectation is that decisions of fundamental importance to the polity should be the subject of democratic accountability and oversight, *civilian* ministries of defense must assume these responsibilities with military personnel advice and feedback. But military personnel should not have ultimate control over these processes.

52. A civilian ministry is crucial as a conduit between security forces and legitimate authorities. Although military command may not welcome required communication with a Minister rather than direct contact with the President, experience shows that this arrangement is mutually advantageous: from the military's perspective, having a civilian make their case saves them from being perceived as self-serving and, given their monopoly over the use of force for defense matters, of being threateningly so. For civilian leaders, and specifically a Head of Government, the arrangement provides a buffer that cushions crises.⁴¹ Hence, the arrangement helps shield the military from politics and the political sphere from militarization. This is crucial for atrocity prevention.

53. Normalizing the position of security and defense issues as one topic amongst many in a regular cabinet facilitates coordination and transparency which, again, is key to accountability.

54. Parliamentary participation in defense and security oversight can cover many issues, including defense legislation, policy, strategy, and budgets, as well as some personnel issues, including appointments to the highest ranks and questions such as the ethnic, gender, geographical and religious composition of forces. Subsequently, parliamentary participation in monitoring implementation will also be crucial.⁴²

55. The trend suggests that dedicated parliamentary committees on defense and security that can develop expertise, are adequately staffed and resourced, have appropriate powers to convoke hearings, solicit documents, summon witnesses (including ministers and officers) and draw on independent auditing sources, and whose participation is required before bills are considered by the full floor, can make important preventive contributions. Committees can improve policy quality substantively, through the diversification of views (for instance, guaranteeing inputs by representatives from diverse regions, religious, ethnic, or linguistic groups, and political or ideological outlooks) and procedurally, through the demands of deliberation, especially in public but even *in camera*. Similarly, this form of parliamentary

³⁹ Ibid.

⁴⁰ Bruneau/Goetze, "Ministries of Defense and Democratic Control," *In Who Guards the Guardians and How?* Bruneau/Tollefson, (2006).

⁴¹ Serra, *The Military Transition: Democratic Reform of the Armed Forces* (CUP, 2010); A/HRC/27/56/Add.1.

⁴² Born et al, *Parliamentary oversight of the security sector*, IPU-DCAF, Geneva, 2003.

participation can strengthen the legitimacy of defense and security policy, in addition to canvassing views beyond those of the executive.⁴³

56. Atrocity prevention will be especially well served if it is mainstreamed as a goal in each of the aforementioned functions and topics. Thus, the composition of the security and defense committee, the organization of its hearings and requests for documentation all offer opportunities to maximize inclusiveness and listen to those at greatest risk (including those who may have been victimized before). This is critically important in decision-making about the ethnic, racial, regional, linguistic, or religious composition of forces, including upper ranks, particularly if we consider that most atrocity crimes have at their roots patterns of discrimination or exclusion of groups based on those forms of identity.

57. In ethnically fractured societies, mono-ethnic forces are unlikely to be reassuring and trustworthy, and indeed may pose risks to the protection of members of other groups. The composition and mode of operation of committees can improve the preventive potential of decisions about strategy and policy, including questions such as the location of military camps with implications regarding economic opportunities and costs, relations with the surrounding population, neighbouring countries, etc. Finally, there is some preventive potential in parliamentary participation as a check on the executive (mis)use of security forces (intelligence services included), either to commit atrocities themselves, or support others to do so.⁴⁴

58. The two experts are aware that the preventive potential of parliamentary oversight, as it applies to preventing atrocity crimes, is contingent on conditions that are rarely met:

(a) there has been a global trend in favour of strengthening the executive power at the expense of legislatures;

(b) it is precisely those countries that could use strong parliamentary oversight over their security services that are most likely to lack, for example, dedicated committees;

(c) the usual informational asymmetries between the executive and the legislature are compounded here by secrecy, diminishing the likelihood that committee members can rebut claims made by the executive or the military;

(d) there are issues regarding the inclusivity and representativeness of legislatures, of their ideological fickleness vis-à-vis executives ('rubber stamp' parliaments) that successfully 'securitize' topics for their political advantage, all of which undercut the preventive potential of this form of oversight.

B. Civil Society Institutions

59. Civil society plays a key role in providing checks and balances in societies, holding governments accountable and advocating for the fulfilment of rights. An active, diverse and robust civil society that can operate freely and openly helps to ensure accountability of leaders, respect for the rule of law and the inclusion of all sectors of society in decision-making processes. The Framework of Analysis for Atrocity Crimes notes that the lack of a strong, organized and representative civil society, including a free, diverse and independent national media, is an indicator of increased risk of atrocity crimes.⁴⁵

60. There is no doubt that civil society has contributed to great victories in the domain of rights and the prevention of atrocities and systematic violations. Civil society organizations (CSOs) can claim important victories including the abolition of slavery; desegregation in many parts of the world including the United States and South Africa; the end of the political disenfranchisement of minorities and women in the nineteenth and early twentieth centuries;

⁴³ Giraldo, "Legislatures and National Defense: Global Comparisons," in *Who Guards the Guardians and How*.

⁴⁴ *Reforming Civil-Military Relations in New Democracies*, Croissant/Kuehn, (2017); *The Routledge Handbook of Civil-Military Relations*, Bruneau/Matei (2013).

⁴⁵ Fn 4, risk factor 6, p. 15.

the fight against impunity, particularly in post-authoritarian transitions, and recently, huge advances in the promotion of LGBT rights, among others.

61. This is not to say that civil society always plays a positive role. In each of these struggles, there was a sector of civil society that has stood in ‘opposition.’ Currently, we are witnessing significant mobilization of civil society in favour of populist, xenophobic, and even racist agendas.

62. However, civil society has generally been an engine of progress for human rights. Empirical evidence suggests there are robust correlations between strong and autonomous civil society and positive human rights indicators. This is in part because civil society aggregates and magnifies voices, thereby signalling loudly and clearly to governments their citizens’ preferences – a signalling function that is not merely ‘informational’ but is an unambiguous *claim*. As the author of a study involving 60 countries summarizes his findings, “the strength of civil society prior to transition and its density post-transition not only play a significant role in the deepening of political freedoms and civil liberties among transitional citizens, but also lead to better institutional performance.”⁴⁶

63. Aggregation and magnification can be considered an important social mechanism through which civil society plays its role of contributing to steer the use of public power. This in itself may give effective civil societies a preventive edge, for those capable of effective aggregation and magnification *predictably* will not admit certain types of treatment. In other words, the relationship between civil society and authorities in a country with strong CSOs is not purely reactive but anticipatory as well.

64. There is another mechanism by which civil society exercise a preventive function. It is well known that one of the (intentional) effects of the exercise of abuse is to break social bonds, to isolate people from one another. This “isolating power,” eloquently stressed by Hannah Arendt already in the 1950s,⁴⁷ is instrumental to the effectiveness of abuse of the individual, for it hampers social coordination and exchange of information, which is necessary for any organized opposition.

65. Civil society actors can contribute to building social cohesion and resilience of societies or populations. By uniting people towards the achievement of common objectives, establishing dialogue among different groups and empowering them through education about their rights and the rights of others, by informing people about important public issues and how they can participate in public processes of their interest, civil society actors promote an environment in which atrocity crimes are less likely to occur.

66. The contribution of civil society to atrocity prevention through concrete means such as advocacy, monitoring, reporting, education, conflict prevention and resolution and reconciliation initiatives, among others, has already been acknowledged. For this reason, a framework approach to prevention should include measures to strengthen civil society and increase its autonomy. In addition to direct means, some indirect means of support include: the repeal of laws that limit civic space; foster an enabling environment;⁴⁸ establish platforms, coalitions, or networks; and create official forums for official consultation.⁴⁹

67. Official forums of consultation, not mere ‘talking shops,’ can provide powerful motivation for strengthening civil society, not just generically, but with specialized expertise. For example, rules allowing civil society submission and participation in legislative discussions not only manifest and foster the virtues of inclusiveness and transparency, but also provide a weighty reason for civil society to strengthen its capacities.⁵⁰

68. In several situations where atrocity crimes have been committed, the executive power has turned the security sector into an apparatus for their continued permanence in power, through patronage, ethnicization, and both overt and covert corruption. In fact, this abusive

⁴⁶ Tusalem, “A Boon or a Bane? The Role of Civil Society in Third- and Fourth-Wave Democracies.” *International Political Sciences Review*, (2007) 28, p. 361.

⁴⁷ Arendt, *The Origins of Totalitarianism* (1958).

⁴⁸ Questions asked in the OECD/DAC *Handbook on Security Sector Reform* (2007), p. 112.

⁴⁹ A/72/523.

⁵⁰ A/HRC/34/62; A/71/567.

control over power is one of the risk factors that allow atrocities to be committed in the first place, as the Framework of Analysis for Atrocity Crimes highlights. Security ceases to be a public good and becomes something more akin to the spoils, or privileges of power holders.

69. One way of breaking this stranglehold is to open the process of defining security needs to populations and other stakeholders—i.e., civil society. Participation, for example, in formulating national defense policies, allows those that have been traditionally not only marginalized but victimized by security forces—women, in particular—to define what their security needs are. Simple tools such as a local security survey, if carried out in an inclusive fashion, would be a step in the right direction.⁵¹

70. Although there is usually in civil society the same dearth of technical expertise as found in the civilian parts of government, those deficits can and have been made up in different parts of the world with significant results. The processes leading to the transformation of South Africa's defense forces, the Defence White Paper (1996), the Defence Review (1998) and the Defence Act (2002), were consultative processes to which CSOs made crucial contributions.⁵² Similarly, the Defense Review in post-conflict Sierra Leone, which included consultations with the Truth and Reconciliation Commission and with CSOs, among other stakeholders, led to profound changes in their security sector.⁵³

71. Tellingly, civil society has developed transnational competencies on security sector reform. An important example of this is the African Security Sector Network (ASSN), a pan-African network of civil society actors, security professionals and academics working in the area of SSR. The ASSN works to strengthen capacities of African governments, parliaments, security institutions, intergovernmental organisations, CSOs and other actors to undertake and own SSR processes. The ASSN assisted the African Union (AU) in elaborating its Policy Framework on SSR, which was adopted by the African Union Heads of State in January 2013. Subsequently, the ASSN helped build the AU's SSR capacity, including by developing operational guidance notes and manuals for the implementation of the AU SSR Policy Framework. The ASSN also contributes to high-level AU dialogues on SSR, participates in AU and UN SSR assessment missions in Africa, and promotes South-South experience sharing on SSR.⁵⁴

III. Interventions in the domains of culture and of personal dispositions

72. The Special Rapporteur has consistently argued that transformations that transitional justice seeks to achieve cannot be accomplished durably and sustainably through institutional reforms alone. Neither redress nor prevention are merely a matter of clever institutional engineering. Both call, ultimately, for transformations in culture and in personal dispositions as well.

73. While this study cannot sort out complex relationships between institutional, cultural, and individual initiatives,⁵⁵ the history of institutional reforms that fail to find any support in the local culture or in personal dispositions or convictions is in fact longer than the history of successes.

74. The Special Rapporteur and the Special Adviser take the opportunity to emphasize two types of initiatives with immense potential, not least because they help to establish links between the three spheres of intervention (institutional, cultural, and personal) – namely

⁵¹ Nathan, *No Ownership, No Commitment: A Guide to Local Ownership of Security Sector Reform* (2007), p. 31.

⁵² Anderlini "Negotiating the Transition to Democracy and Reforming the Security Sector: the Vital Contribution of South African Women," Women Waging Peace Commission, 2004. Nathan, "South African Case Study: Inclusive SSR Design and the White Paper on Defence" in *No Ownership, No Commitment*; Africa, "The Transformation of the South African Security Sector: lessons and challenges" (DCAF Policy Paper No. 33).

⁵³ Conteh, "Sierra Leone Case Study: Local Ownership of the Security Sector Review and Transformation Processes" in Nathan, *No Ownership, No Commitment*.

⁵⁴ <http://africansecuritynetwork.org/assn/>.

⁵⁵ De Greiff, "On Making the Invisible Visible: The Role of Cultural Interventions in Transitional Justice Processes," in *Transitional Justice, Culture, and Society*, Ramirez-Barat (2014).

history education and religion. Both can be powerful factors of social mobilization and transformation (for good and ill).

75. Both authoritarian regimes and conflict-affected countries are prone to politicize education, including history education, with divisive, one-sided accounts being deliberately used to preserve a narrative that perpetuates existing (political and/or economic) power structures. In these situations, education creates or sustains social cleavages, fuelling intolerance and resentment, furthers inequality and forms of marginalization (both through the manipulation of access to education and of its content) and, in this way, increases the risk of future violence and atrocity crimes.

76. In many countries with a problematic and divisive history, a decision is made to not teach history at all, teach only ‘ancient’ (pre-conflict) history, or limit history teaching to basic chronologies without any effort to contextualize or explain.⁵⁶ While understandable that it is not easy to reach rapid consensus on the best way to teach a conflict’s history (especially when atrocities have been committed) in its immediate aftermath, it should be clear that avoiding the topic altogether is no solution; at the family and community levels informal narratives, which replicate old divisions, reproduce stereotypes, and instil fear and mistrust, will continue to be transmitted.

77. The reform of curricular and history textbooks has not been accomplished quickly virtually anywhere.⁵⁷ But there have been successes: one is to integrate dealing with the past within other subjects, as was done in Argentina and Chile in the years between the transition and the reform of history textbooks. The teaching of the recent past took place in civics classes, while studying human rights and the constitution.⁵⁸

78. Some truth commissions have produced different versions of their reports along with pedagogical materials, sometimes including child-friendly versions. Some of that material is eventually integrated into classes. Teaching materials that do not try to close the discussion about the past but instead keep the debate alive have also been produced. They include cross national multi perspectival histories, like those produced by the *Center for Democracy and Reconciliation in Southeast Europe* (CDRSEE) for schools in the Balkans.⁵⁹ The textbook developed by the Peace Research Institute in the Middle East (PRIME) *Parallel Histories* is also particularly noteworthy;⁶⁰ given the impossibility of reaching a common or even a bridging narrative at this time, the book contains narratives of events in Israel and Palestine in the twentieth century in three-columned pages: one column carries the Palestinian narrative, another the Israeli narrative. The third is an empty column for students to write down their own ideas, reactions, questions, additional data or conclusions. This example also demonstrates what reformed history education should aim at: enabling children and adolescents to develop their own historical perspective.

79. Experts concur that successful education about the past, including past atrocities, is not merely about producing reliable, accurate, and impartial text books. Just as crucial is adopting pedagogical methods that are suitable to the task that support a productive reflection about past events and human behaviour, and that also contribute to reconciliation processes. Unfortunately, such methodologies are not always in plentiful supply in post-authoritarian or post-conflict settings (where the pedagogy has often been part of the problem). Argentina,

⁵⁶ UNICEF, “The role of education in peacebuilding in Burundi”, Policy brief, p. 3; A/HRC/30/42/Add.1.

⁵⁷ It took 15 years after the death of Franco for Spanish textbooks to start analyzing the dictatorship; A/HRC/27/56/Add.1; almost 10 years after the end of the dictatorship for Chile to review its textbooks (Reyes “A 40 Años Del Golpe De Estado: El Debate Curricular Inacabado,” *¿Chile está educando para la promoción y defensa de los Derechos Humanos?* Santiago de Chile (2013) and 13 years in Argentina (Carretero/Borrelli, “Memorias Recientes Y Pasados En Conflicto: ¿Cómo Enseñar Historia Reciente en la Escuela?” *Cultura y Educación* (2008), pp. 201-15.

⁵⁸ Rodino “Teaching About the Recent Past and Citizenship Education During Democratic Transitions.” *in Transitional Justice and Education*, Ramírez-Barat/Duthie (2017).

⁵⁹ <http://cdrsee.org/projects/education-projects/joint-history-project>.

⁶⁰ <http://vispo.com/PRIME/>.

Cambodia, Northern Ireland, and South Africa, among others, have experiences from which much can be learned.⁶¹

80. Education has great prevention potential by imparting information that has gone through well-known methods that try to achieve a high degree of reliability. While nothing guarantees absolute transparency, accurateness, completeness, inclusiveness, or finality in the construction of accounts of the past, certain methods have been shown to be better than others. Procedural safeguards can be put in place that are more likely to lead to an objective and thorough accounting of history.

81. Education also has great preventive potential by helping people to internalize a conception of themselves and others as rights holders, and deserving of moral consideration. Relatedly, education has preventive potential by instilling intellectual habits of independent and critical thinking. Finally, education can importantly help prevent atrocities and violations by contributing to the development of empathetic responses, and emotional dispositions of consideration and respect.

82. Religion, similarly, has preventive potential that can be more actively tapped. In 2017, the Office of the Special Adviser produced an important document that highlights the role that religious leaders and actors can play in preventing atrocity crimes.⁶² The Plan of Action acknowledges that religious leaders and actors have the potential to influence not just the behaviour of those who follow them but also their beliefs and dispositions. They can use their position to spread messages of hatred and hostility that can incite violence, or to spread messages of peace, tolerance, acceptance and mutual respect, and take action to reduce tensions between communities. It enjoins religious leaders and actors to speak out not only when one's own community is targeted but also when other communities are targeted. It also calls on local communities to support religious leaders and actors when they speak out in relation to preventing incitement to violence, whichever faith they represent. It invites academic and education institutions, and CSOs to provide training to religious leaders and actors on (1) human rights monitoring and reporting; (2) the prevention of atrocity crimes and their incitement; (3) the use of non-violent methods to confront and stand up against incitement to violence, and calls on State institutions to repeal blasphemy laws, for they have a stifling impact on the enjoyment of the right to freedom of religion or belief, and respectful dialogue and debate between communities.

83. The Plan of Action also asks religious leaders and actors to seek opportunities to strengthen expertise, including on interfaith knowledge and dialogue, and to use social media and youth engagement. It calls on religious institutions to promote critical thinking, respect for international human rights standards and to increase understanding and respect for other religions. To this end, it encourages religious institutions to include in education curricula for religious leaders and actors instruction on: (1) different religions and beliefs; (2) international norms and standards on freedom of religion or belief; and (3) global citizenship.

84. Finally, the Plan of Action calls on state institutions to promote a human rights-centred approach to education; embed critical thinking in youth education; develop school curricula for public schools that include teaching about religions and beliefs as a subject inclusive of different traditions; include in school curricula, from early childhood to university-level education, civic and peace education, as well as the history of atrocity crimes and how to prevent their future recurrence.

IV. Conclusions and recommendations

85. Failure to prevent or halt systematic human rights violations increases the risk of violence, conflict and atrocity crimes. Transitional justice has made important contributions to establishing, operationalizing, and realizing the rights to truth, justice

⁶¹ 'Educación y Memoria' established by Argentinean Ministry of Education to promote the teaching of recent history, at: <http://portales.educacion.gov.ar/dep/educacion-y-memoria/>.

⁶² Plan of Action for Religious Leaders and Actors to Prevent Incitement to Violence that Could Lead to Atrocity Crimes, at: http://www.un.org/en/genocideprevention/documents/publications-and-resources/Plan%20of%20Action_Religious_Prevent-Incite-WEB-rev3.pdf.

and reparations. A comprehensive transitional justice policy can therefore contribute to breaking cycles of impunity and marginalization which if left unaddressed increase the risks of recurrence.

86. The authors encourage greater commitment on the part of Member States that have experienced atrocity crimes to the design and implementation of a comprehensive framework of transitional justice policies to address root causes of violence and atrocity crimes. They also encourage the international community to support such processes in a more sustainable manner. Each process must be tailored to the specifics of each context and developed through a comprehensive process of consultation at the national level.

87. ‘Guarantees of non-recurrence,’ the fourth pillar of a comprehensive transitional justice policy, is an explicitly prospective and preventive category of measures. While it is doctrinally the least developed of the four, there is ample (albeit fragmented) knowledge and expertise concerning policies and practices that are effective in preventing systematic violations and atrocities.

88. The authors celebrate the recent increase of interest in prevention and encourage Member States, multilateral and regional organizations, and international cooperation agencies to enhance efforts and commitment to the development and implementation of effective preventive policies.

89. The greatest obstacles are weak commitment, insufficient investment in prevention measures, late interventions and the fragmentation or ‘siloization’ of knowledge and expertise. To this end, a ‘framework approach’ would give substantive content to the broadening and upstreaming of prevention work.

90. A comprehensive framework would include all measures that arguably contribute to the prevention of atrocities. Building on the 2013 report of the Secretary-General on the responsibility to protect,⁶³ which provides an overview of these measures, such a framework would place the important contributions of civil society at the centre. The authors urge the UN system and others to undertake expeditiously the serious and systematic work that will be required to articulate a truly comprehensive preventive framework.

91. This study highlights the contribution of some measures whose preventive potential is generally overlooked. In the domain of governance institutions, it urges Member States to engage in serious processes of constitutionalization, which would include the articulation of a bill of rights and the establishment of an independent and strong Constitutional Court, empowered to guarantee the fundamental rights of all, without discrimination. The ‘new constitutionalism’ derives part of its preventive potential from its socially integrative power. A constitutional reform process, which is consultative and inclusive, can be a vehicle for accommodating distinct national concerns while guaranteeing the protection of fundamental human rights of all and grant explicit protection to different populations, including ethnic and religious minorities.

92. The authors express their grave concern at the undermining of constitutionalism, including by side-lining the authority and independence of constitutional courts, which weakens the separation of powers and promotes the concentration of unlimited and unchecked power in the executive branch.

93. Regarding the crucial reforms in the security sector in the aftermath of atrocities, the study highlights the preventive potential of robust civilian oversight mechanisms and encourages Member States to adopt multi-layered oversight mechanisms. It encourages multilateral organizations and cooperation agencies to emphasize and support such reforms.

94. Security sector reform should be prominently linked to both retrospective and prospective justice and rights related concerns. This study calls for dispersed oversight

⁶³ A/67/929-S/2013/399, pp. 30-64.

mechanisms, including the formation/strengthening of civilian ministries of defense and of parliamentary oversight committees with real expertise and sufficient resources.

95. This study highlights the very important role civil society can play in atrocity prevention, far beyond its commonly recognized contributions (monitoring, reporting, advocacy). A diverse and robust civil society, including a pluralistic media, that is allowed to operate freely and openly without fear of persecution or reprisal helps to ensure accountability of leaders, respect for the rule of law and the inclusion of all sectors of society in decision-making processes. In this way, it can contribute to strengthening the capacity of a society to mitigate and overcome the risks associated with atrocity crimes.

96. This study argues to dispute the monopoly enjoyed by the security sector regarding public order, defense and security policy, and encourages Member States, multilateral institutions, cooperation agencies, aside from national security sectors themselves, to contribute to the cultivation of such capacities, in the conviction that everyone stands to gain from this partnership.

97. It encourages Member States, multilateral organisations, and cooperation agencies to dedicate resources to the development of policies to strengthen civil society. A legal framework for its free operation and the repeal of legislation infringing its freedom are only the basics. Other steps include legislation that requires (or at least allows) civil society inputs to legislative and other decision-making processes. The establishment of networks of civil society organizations, both nationally and internationally, should also be supported.

98. Effective prevention, including atrocity prevention, is not simply a question of institutional engineering, but also calls for initiatives that foster a culture of prevention and changes in personal dispositions. The study highlights the importance of including in national curricula history education that includes objective, multi-faceted accounts of past atrocities, and by highlighting the preventive role that religious leaders and actors can play.

99. The UN system can play a privileged role in the development of a comprehensive atrocity prevention. To this end, the authors recommend the following measures:

(a) A thorough, integrated assessment of the vulnerability of each country to atrocity crimes should be undertaken at the country level, using the risk factors of the Framework of Analysis for Atrocity Crimes as a guide. Based on this analysis, a comprehensive prevention framework should be developed. The breadth of a comprehensive prevention framework needs to be matched by the deployment of capacities in a more seamless way to overcome the aforementioned ‘siloization’. This approach could be integrated into the work of a revitalized joint framework, informed by a ‘conflict and development analysis,’ as the Secretary-General highlighted in his most recent report on Peacebuilding and Sustaining Peace.⁶⁴

(b) The human rights pillar should be fully integrated with the development and the peace and security pillars in the Secretary-General’s Prevention Platform. Nowhere are the links as important as around atrocity prevention. An atrocity prevention lens should be integrated in the work of all three pillars, and better coordinated.

(c) The Office of the Special Adviser on the Prevention of Genocide should be strengthened and its mandate re-configured to better support the integration of atrocity prevention in the UN’s work, including at the country level.

(d) The authors recommend that the Secretary-General importantly support efforts to finalize the draft international convention on crimes against humanity. Swift finalization and ratification/accession will signal a genuine commitment of the international community.

⁶⁴ A/72/707-S/2018/43, para. 24.

(e) The envisaged “new generation of UN country teams [...] led by an impartial, independent and empowered resident coordinator”⁶⁵ could prove groundbreaking impact in achieving more effective atrocity prevention. Consideration should be given to encouraging resident coordinators to form a small “pioneering group” to test the integration of the framework approach, adapted to each country’s specificity, for their UNCT’s joint analysis and planning work.

⁶⁵ A/72/707-S/2018/43, para. 24.

Annex

1. The Special Rapporteur and the Special Adviser held two expert group meetings exploring the relationship between transitional justice and atrocity prevention, bringing together representatives of Member States, UN agencies, funds and programmes, UN mandate holders, civil society organisations and the academic community. The first meeting took place in New York (19-20 September 2017), focusing on how education and constitutional reform can contribute to atrocity prevention. The second meeting, held in Geneva (13-14 November 2017), examined the potential contributions of security sector reform civil society to atrocity prevention. The Special Rapporteur and the Special Adviser thank all participants for their contributions.

2. The two experts also sought written inputs from Member States and civil society organisations, and also received contributions from various UN entities, academic institutions and individual experts, and are grateful for all views received.
