

**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 (A/HRC/37/65)**

**Summary of discussions of expert group meetings that contributed to the
preparation of the joint study**

1. The present is a summary of the discussions of two expert meetings that contributed to the preparation of a joint study, prepared pursuant to Human Rights Council resolution 33/19, on the contribution of transitional justice to the prevention of gross violations and abuses of human rights and serious violations of international humanitarian law, including genocide, war crimes, ethnic cleansing and crimes against humanity (“atrocities¹”), and their recurrence². The Joint Study was presented by the Special Rapporteur, Pablo de Greiff, and the Special Adviser, Adama Dieng, at the 37th regular session of the Human Rights Council, on 5 March 2018.

2. This document presents examples of good practices collected during the two expert group meetings. The meetings were held in New York on 19-20 September 2017 and in Geneva on 13-14 November 2017. The meetings examined the contribution of three categories of measures undertaken in transitional justice contexts that are not commonly linked to the prevention of atrocity crimes: constitutional reform; education reform (in particular history education); and initiatives aimed at establishing effective civilian oversight over security forces. The fourth element considered was the contribution of civil society to the prevention of recurrence and of atrocity crimes.

3. These four categories of measures are linked to the transitional justice pillar of guarantees of non-recurrence. While prosecutions, truth and reparations, measures commonly associated with transitional justice processes, are measures that deal with past events, guarantees of non-recurrence are forward looking and preventive in nature. While this may be the least developed pillar of transitional justice, there is considerable knowledge and expertise on the topic.³ The aim of the expert group meetings was to collect some of this knowledge and expertise for the purposes of the Joint Study.

A. Constitutional Reform

4. In the Joint Study, the Special Rapporteur and Special Adviser note that a constitution with a bill of rights and the proper institutional arrangement for its enforcement can have preventive effects well beyond the general advantages of the rule of law.⁴ They add that constitutional arrangements can be vehicles for accommodating distinct national concerns while guaranteeing the protection of

¹ The term “atrocities crimes” is used to refer genocide, war crimes and crimes against humanity, which are defined in international criminal law, including in articles 5 to 8 of the Rome Statute of the International Criminal Court. Ethnic cleansing, while not established as a distinct crime, includes acts that can amount to one of these crimes, in particular, genocide and crimes against humanity.

² A/HRC/37/65

³ A/HRC/37/65, para. 16

⁴ Ibid. para. 31

fundamental human rights. Constitutions can recognize the diversity of a State and grant explicit protection to different populations, including cultural, ethnic or religious minority groups. Constitutions can also provide for diversity in the composition of the State administrative bodies, civil service, judiciary and security forces. While no diversity management model is perfect, the Joint Study notes that constitutional arrangements have the potential to create the means to address political tensions.⁵

5. In the meetings, experts referred to restraining the power of the State through enshrining fundamental rights in constitutions and through regulating the relationship between political institutions. Participants highlighted the importance of an inclusive and participatory constitutional reform process over particular outcomes as a result of that process.

The importance of inclusive citizenship provisions in constitutions

6. Experts referred to constraining the exercise of power through a constitution that guarantees rights, particularly, inclusive citizenship provisions that prevent individuals from being singled out for discriminatory treatment. They highlighted the importance of all societal groups having the right to citizenship, which is usually associated with having a legal identity, birth registration, and access to employment, healthcare, social welfare and to participation in the broadest sense. Participants highlighted the consequences of denying citizenship rights to some population groups based on their identity, referring to the situation of the Rohingya population of Myanmar, who have been resident in Myanmar for generations but are not considered Burmese. As one expert put it, the denial of citizenship leads to the denial of associated rights and the marginalization of the population. Others referred to restrictive legal provisions in some constitutions that prevent women from passing on their citizenship to their children.⁶ Participants agreed that citizenship equality, when enshrined in constitutions, is a starting point for the prevention of discrimination against vulnerable groups and minorities that can lead to serious human rights violations and atrocities.

On institutions and institutionalization

7. As mentioned in the Joint Study, constitutions establish and regulate the relationship between the different branches of government amongst which power is divided. When institutions are accountable to other institutions, power becomes fragmented which, in itself, has some preventive potential.⁷

8. Participants considered the role of institution building as a way to prevent atrocities. One expert cautioned against the tendency to create political institutions to decentralize power as a measure of short-term conflict mitigation. Whereas decentralization works in some contexts, it does not work everywhere regardless of other factors; by creating provincial or regional institutions in the heat of the conflict, there is a risk of institutionalizing the conflict as it endorses ethnic, geographic, and sectarian divisions. For example, decentralization has proved a disaster in South

⁵ A/HRC/37/65, para. 33

⁶ According to the United Nations High Commissioner for Refugees, 27 States have nationality laws which do not allow women to confer nationality to their children on an equal basis as men. UNHCR 2014, Global 2014-2024 Action Plan to End Statelessness.

⁷ A/HRC/37/65, para. 29.

Sudan. Instead, institution building should be the result of inclusive negotiation and dialogue to attune decentralization with long-term stabilization, and respectful of relevant contextual factors.

9. Overall, experts highlighted the importance of inclusive, transparent and accountable State institutions that deliver equitable services to all populations and respect the rule of law and human rights to reduce the risk of atrocity crimes. Furthermore, national human rights institutions, a strong civil society and a pluralistic media were all identified as contributing to strengthening the rule of law through their activities and reducing risk. Participants pointed at institution building as the biggest challenge, however, and one in which there needs to be more investment.

10. Participants recognized a tension between the importance of investing long-term in the establishment of functioning State institutions following periods of conflict and atrocities and the often short-term nature of funding for such projects. On the importance of a long-term process, one participant referred to the World Bank Study on the Rule of Law, which found that it takes on average 40 years for new institutions to start working effectively. At the same time, donor expectations of project results have gone from ten years to one year. Institution building needs more time and investment than the average four-year donor-funded project. Participants stressed the need to encourage donors to support longer-term projects that allow building and strengthening sustainable institutions.

Paying attention to the process

11. The Joint Study underlines the importance of paying as much attention to the process of adopting and articulating constitutions and bills of rights as is given to the outcome.⁸ Experts stressed the importance of an inclusive and participatory process that respects the rights of all populations groups, including minorities. This kind of process would be more likely to prevent recurrence, as it would more effectively address root causes of previous violence and on-going grievances that could spark new cycles of violence. Others noted that, if not inclusive, such processes could have negative consequences as they could reaffirm existing divisions within societies that may have contributed to conflict.

12. A bottom line on which participants agreed was that these processes must respect human rights principles in order to promote confidence, ensure the engagement of all sectors of society and public participation. As a good example, one expert referred to the 2006 peace process in Nepal. In the Comprehensive Peace Agreement, signed by the Government and the Communist Party of Nepal (Maoist) on 21 November 2006, both sides reiterated their commitment to respect and protect human rights.⁹ Respect for freedom of association, freedom of expression, and social and cultural rights during the peace process framed a constitutional process (leading to the 2007 Interim Constitution) in which there was broad participation of society, based on trust that their views would be heard and their rights respected.

⁸ Para. 35, in *Ibid*.

⁹ Under Section 7, *Compliance to Human Rights, Fundamental Rights and Humanitarian Laws*, both sides committed to respect the rights to life, to individual dignity, freedom and movement, civil and political rights, economic and social rights, rights of women and children, and right to individual liberty. See Comprehensive Peace Agreement, 21 November 2006, section 7, available at: https://www.usip.org/sites/default/files/file/resources/collections/peace_agreements/nepal_cpa_20061121_en.pdf

13. Beyond being inclusive and participatory, experts referred to the importance of early engagement of the population in constitutional processes. One expert referred to the positive effects of early engagement in the constitutional reform processes in the Central African Republic and Libya. Local populations who participated in consultative processes, awareness raising programs and education activities were better able to understand and contribute to constitutional reform processes.

B. History Education

14. The Special Rapporteur and Special Adviser have noted that both authoritarian regimes and governments of conflict-affected countries are prone to politicize history education, with divisive one-sided accounts that are used to preserve a narrative that perpetuates existing power structures. In this situation, the teaching of history education becomes a way to sustain the status quo, accentuates social cleavages and can act as a trigger to instigate new violence.

15. Participants reflected on how objective teaching about violence and atrocities that occurred in a country's recent past, while not easy, can contribute to preventing recurrence. Learning about the causes and events that led to past crimes is important to show that a State acknowledges and recognizes the suffering of citizens pertaining to a certain social group, or ethnic minorities. A narrative that acknowledges that atrocity crimes were committed can become part of the solution, as it contributes to mediation between contending narratives of the past. Consequently, a common narrative can transform relationships among citizens from different groups.

16. However, based on experiences in Latin America (Argentina, Chile and Guatemala, among others) as well as Africa and the Middle East, a participant noted that reforming history as a school subject or revising textbooks is hard to achieve, since it is often difficult to agree on a common position or "truth" about events that occurred. Participants shared the opinion that it might be easier to develop alternative educational approaches.

Alternative educational approaches beyond history education

17. Beyond history education, other educational approaches – such as education about democracy and citizenship - could be pursued in schools and, outside of formal education, could be used to work towards social inclusion and to restore a sense of national unity and community. Alternative educational approaches include "works of memory" that examine how people think about and remember gross violations or crimes that have taken place. Works of memory try to promote truth about the past through collecting documental material, oral testimonies, and others related to the violations suffered by victims. Civil society organizations have undertaken pedagogy of memory through, for example, working on memory sites.

18. Participants referred to examples of alternative educational approaches that might lead, at a later stage, to changes in the curricula of history education. Referring to El Salvador, for example, one participant cited the work of the Auschwitz Institute for Peace and Reconciliation (AIPR) with the Ombudsman's Office and the Ministry of Education. This work focuses on assisting teachers to develop strategies to teach civic education in the classroom with an historical memory dimension, related to the country's recent civil war, as the history of the civil war is not included in the school

curricula. As this expert pointed out, AIPR works to develop educational material to help secondary level students better understand the present, taking into account the historical perspective and the legacy of the armed conflict. In connection with these efforts, the Ministry is considering including the legacy of the past in the official history curriculum as part of a proposal to revise the social science curriculum.

Critical thinking and other skills

19. Discussions revolved around the importance of teaching students to think critically when learning about history. Participants stressed the importance of the methods used in classrooms, how to teach students to think about history, how to undertake research and how to argue. History is taught as informational (facts) but it is also interpretative. History is formational, not only informational, while students are agents in the production of history and not only recipients.

20. Critical thinking can also be applied to interpret the media and political messages, identify lies or half-truths, and verify public information to see if it is reliable. Participants highlighted the importance of developing other skills in the classroom such as empathy, mutual respect, tolerance and non-discrimination, to understand the other as a fellow citizen. This teaching is particularly important in transitional justice contexts, where social stresses seen in society are likely to be replicated in classrooms. As one expert explained, it is useful to understand classrooms as a mirror of what is going on at a social level.

Teacher training and support materials

21. Participants stressed the need to provide training and support to teachers, especially in contexts where mass atrocities have taken place. Teachers may find it difficult to teach about a recent past in which they were involved. As one expert expressed, in South Africa, for example, teachers saw history as objective, so they distanced themselves as if they were not part of it. Through training, teachers can learn how their own experiences impact their teaching. In South Africa, the education department in the University of the Western Cape worked with two civil society organizations, *Shikaya* and *Facing History and Ourselves*, to develop a teacher-training program called *Facing the Past*.¹⁰ The program included training on new content and pedagogy; upskilling for teachers poorly prepared; and opportunities for teachers to consider their personal legacies from the apartheid era. Teachers that received training were better able to enable micro-processes of transitional justice in their classrooms.¹¹ Other experts recommended producing complementary materials that support teachers, such as booklets, teaching guides, narratives, oral testimonies, and visiting memory sites.

Beyond the school

22. Steps should be taken to stop using history as a source of conflict, and instead use it to resolve ongoing conflicts or prevent future ones. One example of how this can be done is the work of the organization “*Historians without Borders*”, which

¹⁰ *Facing History and Ourselves*, is a United States-based teacher training organization that supports professional development through a methodology that uses events in other countries as a way of addressing one’s own past. <https://www.facinghistory.org>; *Shikaya* is a South African non-profit civil society organization that supports the personal and professional development of teachers. <https://www.shikaya.org>

¹¹ Tibbitts, F. L. & Weldon, G. 2017. History Curriculum and Teacher Training: Shaping a Democratic Future in Post-Apartheid South Africa? *Comparative Education*, 53, 442–61.

facilitates public discussion about history and the use of historical knowledge to promote peacebuilding. Through creating a space for dialogue among historians, this initiative tries to lessen the possibilities that history is used as a tool to promote or aggravate conflict.

C. Security Sector Reform (SSR)

23. As the Joint Study points out, effective SSR during transitions can help reduce the risk of recurrence and build resilience to atrocity crimes. Such reform processes should aim at establishing robust civilian oversight mechanisms; promote the inclusion of personnel from diverse population groups; or vet personnel to exclude identified perpetrators, among other aspects.¹²

24. The Joint Study refers to effective civilian control of security forces through formal and informal accountability mechanisms, although it focuses on formal mechanisms. Among these, it examines one particular form of executive oversight - a Ministry of Defence, and one legislative - parliamentary participation in defence and security oversight.

25. During the expert group meetings, participants were asked to provide examples of ways in which the establishment of civilian oversight mechanisms has contributed to preventing atrocity crimes. In their responses, they dealt primarily with formal mechanisms of external oversight, such as parliamentary oversight committees or ombudsperson's offices. However, they also examined strong informal accountability mechanisms, such as the role of civil society organizations in monitoring the reform of the security sector. Participants also looked at hybrid mechanisms, a mix between legislative or executive bodies with representatives of civil society.

26. Participants discussed two preliminary issues before providing examples. First, they acknowledged the need for political will to allow civilian oversight mechanisms to function properly. This would include political support for the appointment of the people who would be willing to push the reform of the security sector politically. While acknowledging lack of political will as a barrier to prevention, other participants also pointed to the importance of identifying, in any given context, which other factors could limit the effectiveness of a particular mechanism of civilian oversight.

27. A second preliminary topic of discussion was in response to participants' recognition of the challenges in demonstrating that oversight mechanisms have had a preventative effect. One participant suggested looking at the differences between security forces before and after the establishment of the oversight mechanism. Another suggested assessing how certain mechanisms develop and contribute to a different dynamic. The analysis of these processes combined with specific case studies - which will help to shed light on the conditions under which mechanisms are effective - would enhance our understanding of how oversight mechanisms work to prevent violations. Taking these preliminary considerations into account, experts discussed concrete examples.

¹² A/HRC/37/65, para. 42.

Oversight mechanisms

28. Participants underlined the theory of change at the basis of oversight mechanisms. As one expert expressed, enhanced accountability as a result of effective oversight, combined with human rights training, should encourage the police and other security institutions to comply with human rights obligations so that they are less likely to commit violations. In Northern Ireland, for example, civilian oversight mechanisms were established in response to the recommendations made in the report of the Independent Commission on Policing (the “Patten Commission”), which was set up after the 1998 Belfast Agreement. In 2001, the Northern Ireland Policing Board was established, with representatives of the Legislative Assembly as well as civil society actors. It was tasked with securing an effective and efficient local police service, monitor the work of the police, and oversee complaints against senior officers and discipline senior officers, among other duties.¹³ It was through these functions that the Policing Board ensured police accountability and transparency in carrying out its work. The Policing Board also employed two independent human rights lawyers who produced annual reports on the performance of the police and made recommendations on ways in which further improvements could be made.¹⁴ Furthermore, the Office of the Police Ombudsman was established to deal with complaints against police officers. As one expert noted, its major role has been to review police practice during the conflict – particularly exposing collusion between the police and criminals who were used as informers, and who were also involved in the murders of local people.

29. In Sierra Leone, community policing has evolved since the establishment of the Local Policing Partnership Boards (LPPBs). LPPBs were created soon after the war ended in 2002 to ensure stakeholder participation in the process of policing in order to rebuild relations with local communities. They are expected to investigate and resolve conflict between members of the community and increase the level of interaction between the police and the local communities. Since their establishment, LPPBs have supported the re-formalization of relations between the police and local communities.¹⁵ As one participant noted, they also monitor police performance and serve as a platform for consultations on issues affecting policing.

30. One expert expressed the views that in countries that have regressed on democratization, we have seen the weakening of mechanisms of civilian oversight over the security forces, for two reasons. First, the separation of civilian from military institutions - one of the key features of civilian control - has weakened. Second, the leaders of many of these countries have resorted to using the security forces to sustain their power and authority, and in turn, compromised the security forces. The expert noted that in Zimbabwe, for example, before the military overthrew the Government of Robert Mugabe, the security forces had carved out a distinctive space in the political arena, and were deployed repeatedly to rig elections and disorganize

¹³ Available at: <https://www.nipolicingboard.org.uk/our-work>

¹⁴ Under Section 3(3)(b)(ii) of the Police (NI) Act 2000, the Northern Ireland Policing Board has a statutory duty to monitor the performance of the Police Service of Northern Ireland (PSNI) in complying with the Human Rights Act 1998.

¹⁵ See DCAF, Community Policing in Sierra Leone – Local Policing Partnership Boards, available at: <https://issat.dcaf.ch/Learn/Resource-Library/Policy-and-Research-Papers/Community-Policing-in-Sierra-Leone-Local-Policing-Partnership-Boards>

opposition parties. This expert highlighted the need for more research into the causes of the weakening of civilian oversight institutions over the security forces.

31. Participants reflected on challenges linked to vetting and integration processes. They pointed out that these processes should be applied equally to armed personnel of all parties to a conflict so that the message is consistent, and the focus is to pursue those responsible for committing crimes, not members of a particular group. One participant stated that any vetting process had to be part of a wider reform process to be effective. Referring to the experience of South Africa, an expert stated that she believed that one of the greatest failures when restructuring the security services had been the inadequate vetting policy for personnel absorbed into or kept in the new security services, or subsequently employed by them. According to this expert, personnel were absorbed as a result of three major integration processes: five formal armed forces, 11 police services, and four intelligence services under the apartheid system were merged with their counterpart components of the African National Congress and the Pan African Congress as a result of the political agreement forged during the negotiated transition. However, these integration processes were treated separately from the truth and reconciliation commission amnesty processes. As a result, integration of personnel into the security services was not dependent on their having been granted amnesty and the amnesty process was not used as a vetting tool.

32. As for the integration of ex-combatants, participants noted that these processes should not be one-sided and that all sides to a conflict, whether former State security forces or non-State forces, should be offered minimum guarantees of dignity. However, one expert referred to the risk of institutionalizing conflict when militias are re-hatted as regular army and given the task to police communities. Another participant argued against the idea of immediate integration of former combatants into regular armed forces. Instead, this participant suggested including former combatants in humanitarian activities, such as demining, which would be less political. This type of humanitarian activity can be used as confidence-building measures. In Niger, for example, former rebels have been successfully integrated in demining forces and contributed to demining, as they knew where they had planted mines.

33. Another participant pointed at tensions that can develop between demobilization, disarmament and reintegration (DDR) and transitional justice processes. In Colombia, for example, between 2006 and 2010, separate Supreme Court and Constitutional judgments ruled out pardons for thousands of low ranking officers from paramilitary groups. Subsequently, fifteen to twenty thousand former paramilitaries started to be recruited by organized crime ("*bandas criminales*," known as BACRIM).

Gender in SSR and DDR processes

34. Participants referred to the need for a gender approach when establishing processes to reform the security sector or to demobilize, disarm, and reintegrate combatants. Very often, such processes do not include support for women combatants. In Sierra Leone, the disarmament process did not consider women and girls despite strong calls from civil society organizations to do so. Among the many challenges they face, women combatants who are re-integrated into society face a

complete change of status. In the eyes of society, they are often seen as “impure”, a perception that increases when they come back with children. A participant referred to the situation of former FARC combatants in Colombia, noting the challenges faced by women who lost their status as leaders, including in high ranking positions, and are re-inserted into a patriarchal society.

Civil society participation in security sector reform

35. Participants discussed the important role of civil society in the reform of the security sector. In Sierra Leone, for example, civil society was involved through organizing civil-military engagement, and through providing civic education to enable the military to participate in the truth and reconciliation process. Furthermore, civil society has contributed to developing the training curriculum for the military and is currently supporting the development of a training manual for the security sector in preparation for the general elections.

36. Also, in Sierra Leone, to prevent the recruitment of individuals who had committed atrocities, civil society circulated pictures of potential recruits to the security services to allow people to come forward if they recognized any that had committed human rights violations during the war. According to this participant, this process was not totally successful as thousands of former fighters from armed groups, including those allegedly involved in war crimes and crimes against humanity, were recruited into the security services after the war. At that time, it was decided that, in the spirit of reconciliation and the call for reintegration, some of the fighters who were interested in becoming members of the regular security apparatus could be recruited, bearing in mind most of them had been abducted and at a very young age. Still, there was public outcry against the recruitment of former fighters. In this regard, one participant referred to the importance of establishing complaint mechanisms, and to focus on how these mechanisms receive complaints, how the complaints are followed up and decisions taken. Especially important are witness protection programs for those who file complaints.

D. Civil Society

37. The role of civil society has been discussed in relation to the three sets of measures already examined. In the area of constitutional reform, civil society plays a major role in ensuring a reform process that is inclusive and participatory. Given the difficulties of reforming history education, civil society has in some cases embarked upon alternative educational approaches. Civil society has also undertaken important initiatives in relation to the development of and participation in mechanisms that oversee the work of the security sector.

38. The Joint Study refers to the key role of civil society in providing checks and balances in societies, holding governments accountable to their people and advocating for the fulfilment of rights. It calls for an active, diverse and robust civil society that can operate freely and openly and notes that a lack thereof, is an indicator of increased risk of atrocity crimes.¹⁶ The fourth element considered in the expert meetings was the contribution of civil society to the prevention of atrocity crimes overall.

¹⁶ HRC/37/65, para. 59

39. At the start, participants stressed that civil society could play a negative as well as a positive role. Civil society actors, for example, could carry out actions that encourage or incite violence rather than prevent it. Acknowledging the fact that civil society actors have also participated actively in the commission of violations and atrocities, the Special Rapporteur and the Special Adviser focused discussion on civil society's positive and preventative role.

40. It was agreed that the work of civil society could contribute to decreasing the likelihood of violence through various means. A starting point of agreement was the importance of civil society maintaining a sustained connection and responsiveness to its constituents, as a way to strengthen its work and resilience to potential governmental pressures. Civil society should develop tools to communicate with constituents effectively, to survey and understand constituent interests, and to garner funding from local sources, including from constituents. Furthermore, civil society organizations should be locally led and well-funded. As funding often comes from governments, however, civil society organizations are sometimes not completely independent when choosing strategic areas of work and advocacy. Lack of independence could lead civil society to lose ground with their constituents.

41. After these preliminary points, participants provided examples of ways in which national and international civil society organizations, including religious leaders, labour and professional organizations have contributed to preventing atrocity crimes. The examples have been arranged under three sections: the role of civil society in transitional justice processes; second, the role of civil society in areas with little State presence; and finally, on the ways in which civil society could be strengthened.

On the role of civil society in transitional justice processes

42. Participants highlighted the importance of an early and inclusive engagement of civil society in transitional justice processes. Early engagement should affect the design of transitional justice efforts in ways that strengthen their preventive effect, because by doing so they will more effectively address root causes of violence and on-going grievances that can spark new cycles of violence. Participants also stressed the importance of going beyond engagement with human rights NGOs on human rights issues and include a wide range of organizations, particularly those working with victim and other vulnerable populations, including health, humanitarian, religious, labour, and women's organizations.

43. A participant gave as example the Community Relations Council in Northern Ireland, as a case of early engagement by civil society to support a peace process. The Community Relations Council was established in 1990, prior to the 1994 ceasefires, as an independent company and registered charity. The Council was set up to promote better community relations between Protestants and Catholics, to promote recognition of cultural diversity and to support change towards reconciliation, tolerance and mutual trust. It has worked to identify and develop effective approaches to peace building and reconciliation in partnership with local people and organizations, and with central and local governments. It has also acted to provide financial support for peace building through civic leadership, wide community engagement and the sharing of best practices. These interventions have included work

to engage and divert young people from paramilitary activities and public disorder. They have also included re-integration programmes for ex-combatants and preventative measures aimed at non-recurrence.

44. The work of the voluntary and community sector and human rights NGOs has also been vital in the case of Northern Ireland. As one expert noted, the Community Foundation for Northern Ireland, established in 1979 as the Northern Ireland Voluntary Trust, has funded social justice and peace building initiatives, including important work with ex-parliamentary prisoners from both sides of the political divide. As another example, the Committee for Administration of Justice, working with Queens University and Ulster University, developed a model 'Dealing with the Past' Bill in 2015 covering the legacy of the past investigations, information retrieval, oral history archive and implementation and reconciliation institutions.

45. Early engagement by civil society in transitional justice processes can also promote an inclusive process. One participant referred to the role played by civil society in the early stages of the transitional justice process in South Africa. According to this expert, at the beginning of the 1990's, the two main protagonists were both in relatively weak negotiation positions, with South African President F.W. de Klerk losing power while Nelson Mandela had not yet consolidated his as the new President of the African National Congress. At that time, it was the trade unions, business movements and the faith communities that started a process that led first to a National Peace Accord, which, in turn, paved the way for the Convention for a Democratic South Africa. The first time Mr. Mandela, Mr. De Klerk and Mr. Buthelezi (Zulu Chief and leader of the Inkatha Freedom Party in fight with Mandela's ANC) denounced violence together, publicly, was at a civil society event in September 1991. The event had a vital impact, considering that those who organized and sponsored the meeting included the church and trade unions, both with real constituencies on the ground. At the other end of the transition, Archbishop Tutu helped to bring the Truth and Reconciliation Commission (TRC) process, from 1995 to 2002, much closer to the people, by explaining the process in a language that was familiar to the vast majority of victims.

46. In contexts of ongoing transitional justice processes, civil society's ability to build bridges, overcome existing religious and social cleavages and hold an inclusive and common position is an important factor in decreasing the likelihood of recurrence of conflict and atrocities. As one expert highlighted, in Tunisia, where there have been divisions among civil society actors, the ability of civil society to overcome existing cleavages and to create an inclusive dialogue would be an important step to prevent the risk of recurrence of violence - and of a relapse into pre-revolution practices of authoritarianism, corruption and serious human rights violations. For example, civil society organizations worked together to counter the bill on economic reconciliation.

On the role of civil society in areas of limited governance

47. Participants also highlighted the role of civil society in preventing violations in areas that are inaccessible to governments and where there is little State presence. Particularly, participants acknowledged the ability of civil society to provide civic education about rights and deliver important messages of peace and reconciliation. Civil society is understood here as including artistic, educational, youth and religious

organizations. One example given was the work of the American Bar Association Rule of Law Initiative and its Malian partner *Collectif Cri de Coeur*. In Northern Mali, the two organizations work with youth organizations to dissuade young people from using violence and to channel their energies through sport, legal action, and advocacy. For example, in 2016, they organized a four-week football “tournament for peace” in Gao. The tournament sought to promote peace and stability by raising awareness of national reconciliation and justice initiatives and to encourage a culture of peace, tolerance and respect for diversity.¹⁷

48. Other participants alluded to the role played by traditional groups. In Mali, for example *griots*, who are repositories of oral tradition and often seen as societal leaders, remind people about certain traditional codes of conduct between communities. Their mediation has been successful in reducing tensions and bringing back people from the brink of violence.

49. In areas with little access to State structures, local populations depend on traditional mechanisms for dispute resolution. One participant referred to the Central African Republic, where *Avocats Sans Frontières* (ASF) has worked with several organizations that have retained a certain level of legitimacy following the 2013-15 crisis. In particular, ASF has worked with the *Commission Episcopale Justice et Paix* and *Association des Femmes Juristes de Centrafrique* to strengthen their knowledge of basic human rights standards, including the rights of the accused in sensitive cases, such as allegations of witchcraft, and in documenting the cases and their outcomes. Given the heavy tensions in the country, the work of these organizations, as well as local and traditional leaders, is essential to solve micro-conflicts at an early stage and prevent them from escalating into larger waves of violence.

50. Participants also reflected on the important role that religious leaders have played in spreading messages of peace and tolerance and taking action to reduce tensions in areas with little State presence. In 2013, violence in the Central African Republic degenerated into a conflict between Christian and Muslim armed groups, in which civilians were targeted. After President Francois Bozize called for Christians to attack Muslims, leaders of the Christian and Muslim faiths created the Inter-Religious Forum. The Inter-Religious Forum used local radio stations to spread messages of peace to counter incitement to violence by leaders of armed groups and politicians. Churches were used to shelter Muslims fleeing the violence. Civil society organizations trained members of the Inter-Religious Forum on ways to facilitate dialogue and provided financial resources to establish more radio stations to spread peace messages in different languages. In parallel, human rights organisations and civil society groups, like the *Organisation pour la Compassion des Familles en Détresse* or the *Ligue Centrafricaine des Droits de l'Homme*, documented human rights violations and atrocities committed by government and rebel forces. The information collected was used to bring international attention to the situation and urge the International Criminal Court to carry out investigations in the absence of national capacity to investigate and prosecute serious violations and crimes taking place. The national judiciary had been weakened by corruption and the armed conflict.

¹⁷ For the full story, see American Bar Association Rule of Law Initiative, 2016, available at: https://www.americanbar.org/advocacy/rule_of_law/where_we_work/africa/mali/news/news-mali-football-tournament-promotes-peace-reconciliation-1016.html

On ways to strengthen civil society

51. Participants were also asked to provide examples of how the capacity of civil society organizations could be strengthened to contribute to the prevention of recurrence and atrocity crimes. Experts identified the development of national, regional, and global networks as an effective approach. These networks can provide peer support, share lessons learned and resources, and offer solidarity in the face of a backlash from authorities. One example of such an effort is the American Bar Association Rule of Law Initiative's work in support of the Balkans Regional Rule of Law Network, a network of bar associations and civil society organizations in the Balkans region.¹⁸ Another participant noted that national networks composed of diverse civil society organizations can be stronger, as it becomes difficult for repressive regimes to intimidate all players. However, group dynamics and the organization's individual identity could emerge as challenges to establishing these networks.

52. Another way to strengthen the capacity of civil society to prevent violations is to support them in more effective engagement with government actors. One expert shared her views that, in transitional justice contexts, civil society is often experienced and effective in taking an adversarial advocacy posture vis-à-vis the government. In particular, human rights organizations have traditionally documented and reported on State sponsored violence and human rights violations, or have advocated against the State when it has used excessive force. Conversely, civil society may have little experience of meeting and working with governments to present and advance policy reform. Where opportunities arise for constructive engagement with governments, skills building for civil society in undertaking such engagement, developing policy options, or drafting legislation, among others, could be very productive.

53. A further avenue to strengthen civil society would be through funding of grassroots and civil society organizations in the global south. Participants pointed out that currently only one per cent of official development aid goes to civil society organizations in the global south, while 75 per cent of the funding from private foundations for human rights organizations goes to organizations based in the United States and Europe. One participant also criticized the United Nations engagement with civil society in the field, noting that in many cases, the United Nations and other international donors repeatedly fund the same organizations, contributing to promoting and maintaining an elite. To avoid damaging relations within civil society, it was recommended that the United Nations and international donors should engage with a broad array of actors.

54. Finally, civil society has much to gain from developing its capacity to use technology effectively, from employing state-of-the-art social media techniques to using technology to document abuses or deliver information and services. But attention needs to be paid to developing technology that civil society can use to strengthen its ties to local constituencies, as opposed to creating new barriers. There is a great interest and capacity within the private sector to contribute to the development of this potential.

¹⁸ See Balkan Regional Rule of Law Network, available at: <http://brrln.org/http/index.php?id=2&mv=1>

List of experts who contributed to the meetings

The name and position of the experts who participated in the meetings is attached in alphabetical order.

Africa, Sandy: Assistant Director, Head of Sub-Saharan Africa Division at the Geneva Centre for the Democratic Control of Armed Forces (DCAF).

Allamby, Les: Chief Commissioner for human rights in Northern Ireland

Andersen, Elizabeth: Executive Director of the World Justice Project. At the time of the expert meetings, Associate Executive Director of the American Bar Association and Director of its Rule of Law Initiative (ABA ROLI).

Bleeker, M^o: Special Envoy for Dealing with the Past and Prevention of Atrocities, Swiss Federal Department of Foreign Affairs.

Born, Hans: Assistant Director and Head of the Policy and Research Division at DCAF.

Brinkman, Henk-Jan: Chief of the Policy, Planning and Application Branch of the Peacebuilding Support Office in the United Nations Secretariat.

Choudhry, Sujit: Director, Center for Constitutional Transitions. Guest Researcher, WZB Berlin Social Science Center, Center for Global Constitutionalism

Conte, Jean: Project Officer in the Sub-Saharan Africa Division, at DCAF. At the time of the expert meetings, Project Officer for Tunisia in the Middle East and North Africa

Decrey Warner, Elisabeth: Honorary President Geneva Call. Associate Fellow at the Geneva Centre for Security Policy (GCSP). At the time of the meeting, Executive President of Geneva Call

Deng, David: Human rights lawyer

Djordjević, Djordje: Sustaining Peace Specialist, Bureau for Policy and Programme Support, United Nations Development Program (also co-author of the UN-WB Pathways for Peace: Inclusive Approaches to Prevention Violent Conflict report).

Du Toit, Fanie: Chief Technical Advisor for Reconciliation at the United Nations Development Program, Iraq. Previously, Executive Director Institute for Justice and Reconciliation in Cape Town, South Africa

Ebo, Adedeji: Director of the Security Sector Reform Unit at the United Nations, DPKO and Co-Chair of the UN Inter-Agency Task Force on Security Sector Reform

Edwin, Valnora: Executive Director of Campaign for Good Governance in Freetown, Sierra Leone

Goebertus Estrada, Juanita: Congresswoman, Colombian House of Representatives. At the time of the meeting, Deputy Director of the Institute for Integrated Transitions

Hamber, Brandon: John Hume and Thomas P. O'Neill Chair in Peace at Ulster University based at the International Conflict Research Institute (INCORE)

Haysom, Nicholas "Fink": United Nations Secretary-General Special Envoy for Sudan and South Sudan since March 2016

Khadiagala, Gilbert M.: Jan Smuts Professor of International Relations and Director of the African Centre for the Study of the United States at the University of Witwatersrand, Johannesburg, South Africa

Kiai, Maina: Director of InformAction. First United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association, May 2011 to April 2017

Kikoler, Naomi: Deputy Director of the Simon-Skjoldt Center for the Prevention of Genocide based at the US Holocaust Memorial Museum

Majekodunmi, Ben: Senior Human Rights Officer, Political, Peacekeeping, Humanitarian and Human Rights Unit, Executive Office of the United Nations Secretary General

Majinge, Charles Riziki: Expert in public international law, constitutional law, international criminal law, international human rights law and the laws of international organizations. He currently works with the United Nations Assistance Mission for Iraq.

Majola, Bongani Christopher: Chairperson of the South African Human Rights Commission since 3 January 2017

McWilliams, Monica: Emeritus Professor in the Transitional Justice Institute at Ulster University. Signatory of the Belfast/Good Friday Agreement; former oversight Commissioner for prison reform in Northern Ireland and current member of the Independent Reporting Commission on the disbandment of paramilitary groups in Northern Ireland; and former Chief Commissioner of the Northern Ireland Human Rights Commission

Mennecke, Martin: Associate Professor of International Law, University of Southern Denmark

Mihlar, Farah: University of Exeter, UK. At the time of the meetings, independent researcher consultant for the International Crisis Group in Sri Lanka (ICG)

Milanovic, Marko: Associate professor at the University of Nottingham School of Law

Morada, Noel M.: Senior Research Fellow and Director, Regional Diplomacy at the Asia Pacific Centre for the Responsibility to Protect, School of Political Science, The University of Queensland St. Lucia, Brisbane, Australia

N'Diaye, Boubacar: Professor of Political Science and Pan-African Studies at The College of Wooster, Ohio, United States

O'Neill, William: Lawyer specializing in humanitarian, human rights and refugee law

Pawnday, Savita: Deputy Executive Director of the Global Centre for the Responsibility to Protect

Pascual, Buenaventura C.: Decorated infantry general with 32 years of service in the Armed Forces of the Philippines. Currently he is an International expert in Mozambique Military Affairs Commission and a convener of the Independent Working Group on Transitional Justice - Dealing with the Past for Bangsamoro.

Rodino, Ana Maria: Lecturer at the Universities of La Plata and Buenos Aires (Argentina), and Senior Human Rights Education Consultant for the Inter-American Institute of Human Rights

Rombouts, Heidi: Lawyer and social scientist with specific expertise in human rights, rule of law and transitional justice. She currently works as a consultant in Washington D.C

Rumin, Serge: Senior Advisor on Dealing with the Past and Prevention of Atrocities within the Swiss Federal Department of Foreign Affairs

Seidel, Katrin: Academic coordinator 'Joint Network Rule of Law Promotion', secondment to the German Federal Foreign Office's stabilization unit (2017); research fellow at Dep. 'Law & Anthropology', Max Planck Institute for Social Anthropology

Shaheed, Farida: Sociologist, Executive Director of Pakistan women's rights organization, Shirkat Gah - Women's Resource Centre. In 2009, she was appointed First United Nations Independent Expert in the field of cultural rights- a position she held until 2015

Sriskandarajah, Dhananjayan (Danny): Secretary General and CEO of CIVICUS since January 2013. Headquartered in Johannesburg, CIVICUS is the global civil society alliance with members in more than 180 countries

Tanodra-Armamento, Leah C.: Commissioner, Commission on Human Rights in the Philippines since 2015

Thors, Astrid: Lawyer and a Finnish politician and the former OSCE High Commissioner on National Minorities, HCNM (2013-2016)

Tomlinson, Andrew: Quaker United Nations Representative and Director of the Quaker UN Office (QUNO) in New York

Turpin, James: Chief of the Prevention and Sustaining Peace Section at the Office of the United Nations High Commissioner for Human Rights

Van Cutsem, Chantal: Executive Director, Avocats Sans Frontières

Vogt, Viktoria: Research associate at the project 'Joint Network Rule of Law Promotion' and external consultant at the German Federal Foreign Office's stabilization unit

Waller, James: Cohen Professor of Holocaust and Genocide Studies at Keene State College (NH-US) and Director of Academic Programs at the Auschwitz Institute for Peace and Reconciliation

Welsh, Jennifer M.: Professor and Chair in International Relations at the European University Institute and a Senior Research Fellow at Somerville College, University of Oxford. In 2013, she was appointed by the UN Secretary General to serve as his Special Adviser on the Responsibility to Protect - a position she held until March 2016

Wierda, Marieke: Rule of Law Coordinator for the Dutch Ministry of Foreign Affairs

Whigham, Kerry: Postdoctoral research and teaching fellow at the Institute for Genocide and Mass Atrocity Prevention at Binghamton University, as well as the Academic Programs Officer for Online Education at the Auschwitz Institute for Peace and Reconciliation

Wyss, Alice: Human Rights Adviser at the UK Foreign and Commonwealth Office, since October 2016

Two other experts invited to the meetings and who could not participate, sent written responses to the circulated questionnaire:

Ramírez-Barat, Clara: Director of the Auschwitz Institute for Peace and Reconciliation's Educational Policies Program

Walter, Barbara: Professor of political science at the School of Global Policy & Strategy and adjunct professor in the UC San Diego Department of Political Science