

African Perspectives on the Appointment and Mandate of the United Nations Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-recurrence

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Introduction and background

On 26 September 2011 the United Nations Human Rights Council (UNHRC) passed resolution A/HRC/RES/18/7, creating a new special-procedures mandate for a Special Rapporteur (SR) on the Promotion of Truth, Justice, Reparation and Guarantees of Non-recurrence.¹ The announcement was welcomed by human-rights and peacebuilding organisations around the world as an important development in establishing increased accountability for human-rights violations and atrocities committed during violent conflict. The mandate came almost 14 years after former SR, Louis Joinet, a UN-appointed expert on the human-rights situation in Haiti, submitted a report outlining a fundamental set of principles to combat impunity in 1997. These have since become known as the Joinet Principles. In 2007, the Chicago Principles on Post-Conflict Justice provided seven widely accepted guidelines on addressing post-conflict justice.²

The Chicago Principles seek to address issues relating to: prosecutions; truth-telling and investigations of past violations; victims' rights, remedies and reparations; vetting, sanctions and administrative measures; memorialisation, education and the preservation of historical memory; traditional, indigenous and religious approaches to justice and healing; and, institutional reform and effective governance.

These principles resonate with a range of African Union (AU) instruments that underscore norms and standards relevant to the application of transitional justice in Africa. Included here are the Constitutive Act of the AU, the AU policy framework on Post-Conflict Reconstruction and Development, the African Charter on Human and Peoples' Rights and the African Charter on Democracy, Elections and Governance, among others.³ Thus, in tandem with the spirit of these principles and documents, the mandate of the SR on the Promotion of Truth, Justice, Reparation and Guarantees of Non-recurrence embodies the guiding principles of universality, impartiality, objectivity and non-selectivity. The mandate aims to enable constructive international dialogue and cooperation, with a view to enhancing the promotion and protection of all human rights, and laying the foundation for peace building in the aftermath of conflict.

A significant number of African states continue to be afflicted by legacies of gross human-rights violations, and their populations remain distressed by atrocities that have yet to be put right. In a number of countries, civil society continues to lobby for justice and reconciliation mechanisms while government action is often hampered by a lack of political will and/or administrative and financial incapacities. The appointment of a SR in this field presents a long-awaited strategic opportunity for governments and civil-society organisations working on these issues to engage directly with the UNHRC. The SR will be able to work with governments and civil society to identify strategic entry points for developing processes and mechanisms aimed at combating impunity, redressing human-rights violations and pursuing justice for victims, thus laying the foundations for reconciliation. Specifically, the SR will be able to assist African countries to develop context-specific and comprehensive approaches to dealing with the past. Through official and non-official country visits to dialogue with key stakeholders, the SR will, for example, be able to provide much-needed technical assistance in countries such as Burundi, the Democratic Republic of the Congo (DRC), Zimbabwe, Uganda, South Sudan, Kenya, Libya, Côte d'Ivoire, Egypt and others, where communities still seek truth, justice and reparations for the atrocities that have affected them either directly or indirectly.

On 19 and 20 March 2012, the Institute for Justice and Reconciliation (IJR) convened a two-day regional consultation in Johannesburg, South Africa, to solicit the expectations and needs of African civil-society organisations, governments, inter-governmental agencies and other key stakeholders, working in the field of justice and reconciliation in Africa, on the mandate of the SR, which came into effect on 1 May 2012.⁴ Countries represented at the meeting included South Sudan, Uganda, the DRC, Burundi, Rwanda, Zimbabwe, Kenya, South Africa, Sierra Leone, Denmark, Norway and Belgium, as well as officials from the UN, the International Committee of the Red Cross and the South African Department of International Relations and Cooperation. This Policy Brief assesses the mandate of the new SR within the UNHRC's Special-Procedures Division, and highlights the main discussion points that emerged from the regional consultation. It concludes with a set of recommendations to the SR, civil society, the UNHRC, the AU and the International Criminal Court (ICC).

The mandate and function of special rapporteurs

'Special Procedures' is the conscience of the Human Rights Council as it brings to the table issues that are usually not raised at an intergovernmental level. – IJR Regional Consultation Participant, March 2012

Special Procedures is the name given to mechanisms established by the UNHRC to conduct fact-finding in and/or monitoring of specific human-rights situations in all parts of the world. The Special Procedures system is a central element of UN human rights machinery, and covers all rights – civil, cultural, economic, political, and social.

Special Procedures create mandates for independent human-rights experts who are appointed either as individuals (as SRs or independent experts) or collectively as a group (usually known as working groups). Working singly or collectively, individuals serve in their personal capacity (usually for a period of three years), are independent (that is, they are not UN employees) and unpaid. As of March 2012, there were 45 Special Procedures (35 thematic mandates and 10 relating to countries or territories) and 66 mandate holders.⁵

Individuals can be nominated for Special Procedures mandates by governments, regional groups of the UN, international organisations, NGOs and individuals. The criteria for nomination include the nominees' relevant expertise and experience, their independence and impartiality as well as their personal integrity and objectivity. Following the nomination process, a Consultative Group of the UNHRC submits a list of proposed candidates to the president of the UNHRC who, after further consultations with regional groups, makes the final appointment. The mandate holders receive assistance from a coordination committee (consisting of five individuals), which was established in 2005, within the Office of the UN High Commissioner for Human Rights (OHCHR) to 'seek to assist coordination among mandate holders and to act as a bridge between them and the OHCHR, the broader UN human rights framework, and civil society, promoting the standing of the special procedures system.'⁶

Special Procedures functions include conducting country visits (at least two per year depending on the availability of resources) to investigate the situation of human rights pertaining to the mandate at the national level. Typically the SR sends a letter to the relevant government requesting an invitation to visit the country, and, if the government agrees, it invites the SR to visit. Some countries have issued 'standing invitations',⁷ which means that they are, in principle, prepared to receive a visit from any SR at any time. SRs respond to urgent appeals, conduct follow-up work with relevant stakeholders (to ensure that issues are addressed and that improvement takes place over time). They also carry out routine work such as fact-finding, monitoring, awareness raising and general collaboration and support to states, NGOs and other stakeholders on the respective mandate.

Individuals and working groups are guided by a strict code of conduct (which, amongst other things, prohibits SRs from speaking out on issues that do not relate directly to their particular mandate) and are required to report annually to the UNHRC. Such reports contain detailed lists of each case that has been taken on in each country during that year and record progress that has been made on each case. In this way, country-specific human-rights violations are publicised and this exerts pressure on states to respond accordingly.

The fact that SRs are unpaid and that very limited funding is provided by the UNHRC to fund the growing number of special-procedures mandates should be considered points of major concern. The activities of SRs are further limited by the fact that they are required to operate independently of any organisations they may be affiliated to and may not accept payment for activities explicitly related to the fulfilment of the mandate. This has resulted in a generally low response rate by SRs with regard to requests to investigate situations and underscores the need for stakeholders who wish to engage SRs on pertinent issues to communicate with them in a concise and targeted way.

The mandate of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-recurrence

As noted, the mandate for the SR on the Promotion of Truth, Justice, Reparation and Guarantees of Non-recurrence was established by the UNHRC in 2011. The appointment followed the established process for all Special Procedures mandate holders and on 23 March 2012 the UNHRC appointed Dr Pablo de Greiff as SR on the Promotion of Truth, Justice, Reparation and Guarantees of Non-recurrence.

Specifically, the functions of this SR include gathering relevant information on national situations relating to the promotion of truth, justice, reparation and guarantees of non-recurrence in addressing

gross violations of human rights and serious violations of international humanitarian law, and to make recommendations to affected stakeholders on potential responses and remedial interventions that will lay the foundations for reconciliation. The SR will be expected to report annually to the UNHRC and to the UN General Assembly.

According to the mandate, which extends over a period of three years, the SR will 'deal with situations in which there have been gross violations of human rights and serious violations of international humanitarian law'. The mandate emphasises:

'the importance of a comprehensive approach incorporating the full range of judicial and non-judicial measures, including, among others, individual prosecutions, reparations, truth-seeking, institutional reform, vetting of public employees and officials, or an appropriately conceived combination thereof, in order to, inter alia, ensure accountability, serve justice, provide remedies to victims, promote healing and reconciliation, establish independent oversight of the security system and restore confidence in the institutions of the State and promote the rule of law in accordance with international human rights law.'⁸

The resolution further specifies the need for a gendered perspective and a victim-centred approach to be integrated throughout the fulfilment of the mandate.⁹

This particular mandate is broad in its potential reach as it consists of four key elements required for dealing with the past. Given the urgent and significant need for the promotion of justice and reconciliation in Africa and the rest of the world, there is no doubt that this mandate is a challenging one. It demands significant resources and commitment, as well as extensive yet selective collaboration with relevant stakeholders, to ensure that correct information is obtained and can be acted upon to enhance accountability for human-rights violations. However, de Greiff is at liberty to interpret and operationalise the mandate as he sees fit, and he will have to decide where to place emphasis in order to design a thematic outline and schedule for the duration of his tenure. In any event, a gendered and a victim-centred perspective will need to be integrated into all his plans as specified by the mandate.

Some criticism was levelled against the architects of the mandate by participants at the event for not explicitly referring to reconciliation. Others argued that reconciliation can be dealt with within guarantees of non-recurrence and through the other pillars of the mandate, given that comprehensive truth-telling processes, the pursuit of justice and the payment of reparations all contribute towards building reconciliation in post-conflict contexts.

Analysing the mandate

At the IJR's Regional Consultation, the themes of the mandate were discussed in separate sessions. The following section outlines the key focal areas that emerged during the presentations and discussions of each theme.¹⁰

On the promotion of truth

Yes, I can forgive and forget. But I need to know who I am forgiving and what I am forgiving him for. – Witness at the South African Truth and Reconciliation Commission cited in a presentation by a speaker

The South African Truth and Reconciliation Commission provided a model for truth-seeking that has been emulated elsewhere in Africa and around the world. Recent examples include: the Kenyan Truth, Justice and Reconciliation Commission; the Sierra Leone Truth and Reconciliation Commission; the Liberian Truth and Reconciliation Commission; and the Dialogue, Truth and Reconciliation Commission of Côte d'Ivoire. The government of Burundi has also proposed establishing a national truth and reconciliation commission.¹¹

Thus, a rich body of learning has emerged in relation to truth-seeking on the continent since the South African Truth Commission was established in 1996. This includes lessons learned from formal institutions, such as the truth commissions mentioned above, as well as from less formal community-led processes, such as the work of the *bashingantahe* in Burundi, the *moyo kum, mato oput* and *nyono tong gweno* processes and others in Northern Uganda, as well as the Gacaca courts in Rwanda to name but a few.¹² However, much work still lies ahead to ensure that the outcomes of such processes are transparent, inclusive, and restorative, and that their intended objectives are achieved.

Every context merits the development of a unique truth-telling process, in order to move towards the formation of a society governed by respect for human rights and the rule of law, as well as the restoration of national unity and the start of a reconciliation process. However, certain elements are central to the basic notion of truth-telling, and these ought to form the cornerstone of the SR's work in engaging with relevant stakeholders and in pursuing his mandate.

As highlighted by delegates from Zimbabwe, it is important to get the timing of interventions right, and for all relevant parties to make a commitment to ending violence and human-rights violations. It is the case that those calling for the creation of a truth-telling process have often used this call to further their own political agendas ahead of an election. Others are unaware of the financial and logistical implications of such processes. The result is truth-telling processes that are compromised by insufficient funding, and criticised for both political interference and a lack of neutrality. In addition, where truth-telling processes exclude significant sections of the population, they run the risk of re-victimising these communities.

After the peace agreement was signed between the Lord's Resistance Army and the Ugandan government, communities in Uganda argued for the pursuit of alternative forms of conflict resolution. From the experience of some of the Ugandan participants at the IJR Regional Consultation, previous attempts at establishing truth commissions have not yielded positive results. In their view, the insights generated from traditional processes and mechanisms for fostering justice and reconciliation should be pursued, including the use of local reconciliation committees and drawing on the practical aspects of traditional-justice frameworks. A number of participants at the meeting called for creative truth-seeking processes to be explored in revealing and dealing with the past, and in pursuit of common national narratives ('collective truths') rather than narrower narratives based on race or ethnic affiliation.

It was agreed that, before committing to and implementing a particular truth-seeking model – whether this be permanent or temporary, official or unofficial, formal or traditional – it is vital for national institutions aiming to recover the truth to learn from comparable experiences and receive technical support from those countries and organisations that have already gained institutional knowledge and practical insights into these processes. The SR, working in partnership with governments, civil-society organisations and academia, could play a central role in facilitating the exchange of such information and learning.

Ensuring full victim participation by making relevant information widely accessible is an important aspect of any truth-seeking process, as are thorough witness- and victim-protection measures and the provision of psychosocial support to victims, witnesses, commissioners, statement takers and interpreters. While maintaining the confidentiality of selected cases through in-camera hearings is vital (in the case of truth commissions), granting public access to hearings and encouraging media coverage of proceedings also forms an important part of creating a transparent process that citizens are able to trust and identify with.

With regard to truth-seeking, the SR might consider developing a 'right to the truth' in line with Article 32 of the First Protocol of the Geneva Conventions. In addition, this could be reinforced by insights from the 2006 study by the Commission of Human Rights which recognised that the right to the truth is a norm of customary international law applicable in both international and non-international armed

conflicts.¹³ This includes the right of families to know the whereabouts of missing family members. Ensuring that states give a greater recognition to this right, while domesticating and codifying it into their national laws could be a further avenue for the SR to pursue during his tenure.

On the promotion of justice

In engaging with justice mechanisms in a state in transition, the SR must be pro-active and do so almost immediately to ensure that the state in transition is 'following the right steps'. – IJR Regional Consultation participant, March 2012

The nature of conflicts and authoritarian regimes in states in transition in Africa reveals the deep structural and historical issues that fuel these destructive and sometimes recurring conflicts. The peace-building and human-rights practitioners from across Africa who attended the IJR Regional Consultation, were hopeful that the SR would prioritise the seeking of a deeper understanding of underlying issues and unspoken dimensions of the crises that affect their countries. They expressed the hope that he would work with them in laying the foundations for effective justice and reconciliation processes in Africa. Along these lines, the SR may consider gaining an understanding, through embarking on systematic research and analysis, of the root causes and complexities of the injustices in these societies, and using this to assist in formulating and monitoring context-specific justice and reconciliation processes. Participants at the IJR Regional Consultation indicated their willingness to partner with the SR on this specific aspect of his work.

Under the rubric of promoting justice, the IJR Regional Consultation agreed that, in dealing with violations of human rights that occurred during periods of protracted violence or conflict, the establishment of independent national institutions is vital in implementing restorative justice initiatives. Examples were drawn from Sierra Leone's National Commission for Democracy and Human Rights, which was mandated in 1999 to bring about lasting peace in the country. In Kenya, the National Dialogue and Reconciliation Agreement facilitated by Kofi Annan, the former UN Secretary-General, established key national institutions to address the standoff between the contesting political parties and the violence that threatened to engulf the country following the controversial presidential elections of 2007.¹⁴

Participants felt that it would be necessary for the SR to engage with countries that are crafting a peace agreement as early as possible, and preferably during the mediation and peacemaking stage. This is to ensure that issues relating to truth, justice, reparations and reconciliation are mainstreamed at the outset of negotiations, and prior to the concretisation of political processes in the aftermath of conflict. Funding for these key truth and reconciliation-seeking institutions must be secured through multilateral donor interventions, while still maintaining the autonomy of the national processes to deal with the past. The situation in South Sudan, which is facing serious challenges in relation to inadequate human-rights enforcement mechanisms and weak institutions governing rule-of-law and justice initiatives, is an example of a country that could have benefitted from further pre-planning on issues relating to truth, justice, and reconciliation. In this regard, the SR would need to find ways to liaise with other branches of the UN, such as the Department for Political Affairs and the UN Peacebuilding Commission, as well as with regional organisations such as the AU.

When national institutions mandated to deal with past injustices are established, the SR should promote local ownership of the justice processes. Local ownership can be encouraged through regional and national consultations with the citizens of the affected countries. For example, in the aftermath of the Sierra Leone conflict, the country's National Commission for Democracy and Human Rights, with the assistance of civil-society organisations, conducted consultations to elicit views on ways to end the conflict. The consultations revealed criticisms related to establishing a truth, justice and reconciliation commission. A majority of participants in the consultations conceded that placing an undue emphasis on justice in the peace agreement may have prolonged the war and perpetuated further loss of life as the protagonists sought to avoid being subject to judicial prosecution. The 'justice' component of Sierra Leone's commission was therefore abandoned. However, the Special Representative of the UN Secretary-General issued a disclaimer noting that

the UN would not recognise amnesty for war crimes, crimes against humanity and serious violations of international humanitarian law.

The International Criminal Court (ICC) has now become a major player in post-conflict justice processes in Africa and the SR will also need to liaise with the ICC as he works with local actors to identify national strategies for dealing with the past.

The SR should promote the sequencing of justice and reconciliation mechanisms. Whereas the timing of the implementation of a retributive-justice framework in one country may, for example, favour the demobilisation of armed militia and their reintegration into society through mechanisms that promote restorative justice, this might be different in another country. As stipulated in the Rome Statute, which established the ICC, there is a function for retributive justice, particularly where the crimes committed are of serious concern to the international community. The Special Court for Sierra Leone is one such example – it is a hybrid court, established at the national level with an international character. In May 2012, this Special Court sentenced Charles Taylor, former president of Liberia, to 50 years imprisonment for atrocities that he committed during the Sierra Leone conflict. Similar efforts were planned but failed in other African countries, including: the DRC's Specialized Chambers dealing with international crimes in the DRC; the Special Tribunal for Burundi, dealing with crimes related to the decades-long conflict in Burundi; the Special Tribunal for Kenya, dealing with crimes following the post-2007 elections; and Darfur's Special Tribunal, dealing with genocide and other serious crimes in Darfur under the auspices of the AU. For individuals and communities affected by violations and war crimes, retributive justice symbolises ensuring that there is accountability and that impunity is not permitted to persist. The SR can therefore contribute to discussions around the establishment of national criminal jurisdictions within the rubric of positive complementarity as espoused by the ICC. In this context, it is recommended that the SR consider engaging the AU and the ICC in a dialogue on the establishment of an ICC Liaison Office in Africa to foster cooperation between AU member states and the ICC in combating impunity on the continent. Such dialogues could draw on the work of African civil-society organisations that possess context-specific knowledge on the issues at stake and have considered various possible strategies for addressing them.

African civil-society organisations need to be equipped to aptly engage with national, regional and international human rights protection systems. The SR, whose mandate emanates from the UNHRC, should work to assist African civil-society organisations to make interventions at Council meetings on issues relating to his mandate. The SR could also recommend a simplification of the processes involved in accrediting relevant civil-society organisations with the UNHRC, to ensure that its processes include smaller community-based organisations. African civil-society organisations that currently have the capacity to meet with the UNHRC can provide a useful link between local African human-rights protection systems and those at international level.

On the promotion of reparation and guarantees of non-recurrence

The need for reparation and guarantees of non-recurrence has been recognised in numerous global and regional mechanisms and instruments, as well as in the basic obligations and aspirations espoused in the national constitutions of various post-conflict countries.¹⁵ However, as observed in the Chicago Principles mentioned above, there is a general lack of basic guidelines for designing and implementing policies to address past atrocities. This makes it difficult for international and domestic actors to efficiently design policies and determine which combinations of strategies are most effective for addressing particular social, political and cultural needs. In Africa, this has been compounded by a lack of common terminology, definitions and concepts that could otherwise improve communication, analysis and coordination between, governments, regional bodies, UN entities and non-governmental organisations.

Reparation and guarantees of non-recurrence are inherently linked to the ending of conflicts and support for democratic transitions, yet they often get negotiated in the immediate aftermath of conflict and authoritarian rule. In these contexts, nations are still dealing with other enormous

challenges such as collapsed infrastructure, continued insecurity, the presence of armed groups, traumatised populations, devastated economies, endemic poverty and transitional governments with limited resources.¹⁶

Participants at the IJR Regional Consultation noted that the needs of victims and affected communities need to be addressed in the short, medium and long term. The development of such strategies is key in bringing justice to those who have been negatively affected by conflict and repression. The Rome Statute (which established the ICC) has championed the rights of victims and affected communities in an unprecedented manner. Under the Statute, victims have the right, upon meeting certain conditions, to participate in legal proceedings and to receive reparations. The right to reparations is related to an accused being found guilty and a demonstrable connection between the victim and the harm caused by the accused. Other international instruments support the linkage of reparations to judicial processes for purposes of effectively addressing the needs of victims and affected communities. However, the ICC's record in terms of ensuring, operationalising and implementing the delivery of reparations is poor. The ICC's verdict, reached in March 2012, pertaining to Thomas Lubanga will be a test case for reparations.

There is a case to be made for delinking reparations from judicial processes at both the national and international levels to ensure that, in the absence of a guilty verdict for a perpetrator, victims and affected communities nevertheless receive some redress for the harm they have suffered. The administrative difficulties in accessing reparations by victims should not be adopted in legislation that establishes national institutions aimed at promoting justice. Simultaneously, where judicial findings have been made by local courts such as the military courts in the DRC and at the International Court of Justice in a 2005 judgment which indicated that Ugandan and Rwandan armed forces were responsible for damage to 'items indispensable for the survival of the civilian population' and loss of life in the DRC, there has been no initiative to avail remedies to victims and affected communities. As reparations are interlinked with justice, ensuring that policies aimed at redressing harm caused to victims and affected communities are adopted and implemented could be an area that may require the SR's attention.

There are also difficulties regarding the level at which reparations are instituted – individual versus group, communal versus national, and so on. Participants at the IJR Consultation highlighted that many African communities already have localised, traditional and widely accepted approaches and mechanisms that could function as reparations. These could be used to lay the foundation for the non-recurrence of violence or conflict. These mechanisms could also play an invaluable complementary role to official judicial processes since they promote 'cultural connections' between individual victims (or their families) and perpetrators in an effort to guarantee non-recurrence. There is, therefore, a need for open and evolving engagement with regard to reparations. This should include a high degree of flexibility linked to the specifics of local realities, and an awareness of the need for gender dimensions to form an integral part of reparations and guarantees of non-recurrence, particularly when gender-based violations are involved.

In Africa, the increasing prevalence of accommodative governments of national unity as part of compromise solutions to ending conflict has added new complications to the pursuit of justice and institutional reforms that guarantee non-recurrence. Issues of reparations are often sidelined in the name of promoting 'unity' and 'peace', and processes of democratisation that are usually achieved through institutional reforms are often diluted or marginalised.

Case studies

Uganda

Since 1960, Uganda has experienced violent conflicts of different levels of intensity. The most protracted conflict has been in northern Uganda between the government of President Yoweri Museveni and the Lord's Resistance Army led by fugitive, Joseph Kony. A peace agreement

signed in 2006 in Juba, South Sudan, led to a significant reduction of violence. However, the reparations clause in the accord has not been implemented in policy or practice. Government officials often manipulate local communities, claiming that development programmes such as roads, health centres and schools are a form of reparations when, in fact, these are services that every government should provide and which the government is routinely providing to communities elsewhere in the country.

Rwanda

Rwanda has experienced cyclical waves of violence throughout its history, but the 1994 genocide against minority Tutsis and moderate Hutus was unprecedented and has left indelible scars on the country and the region. The quest for justice in the aftermath of that genocide has been dealt with through national and international judicial processes that tried high-profile cases, and by local Gacaca courts which adjudicated close on two million cases. At a local level some Gacaca courts were able to oversee reparations by perpetrators and victims. However, reparations processes were largely unsuccessful because the government did not have the capacity to enforce their payment and some perpetrators simply did not have the means to pay. Nationally, a survivors' fund was established but it was inadequate, and has not been able to reach the majority of the war-affected citizens of the country.

Besides institutional reforms that have been undertaken to promote and protect human rights in Rwanda, non-recurrence will largely depend on the quality of justice that is seen to be done. There are still high-profile fugitives suspected of genocide crimes who have avoided the existing accountability mechanisms. There are also growing instances of genocide denial among sections of the Rwandese society. A weakened and exclusionary archiving and memorialisation process has resulted in the loss of important information regarding the genocide. In addition, while Rwanda has made significant strides in terms of economic development, the perceived absence of an open space for political dialogue may give rise to a recurrence of violence in the future. The appointment of the SR coincides with the closure of the Gacaca courts and the end of the International Criminal Tribunal for Rwanda mandate, but the issue of reparations and guarantees of non-recurrence have not yet been systematically dealt with in Rwanda.

Recommendations

The IJR Regional Consultation generated the following recommendations for the SR and for relevant stakeholders who will be engaging with him and the UNHRC during the fulfilment of his mandate.

In the general execution of the mandate, the SR should:

- Consult with a wide variety of stakeholders such as local and international civil-society organisations, including academic and religious institutions, in order to obtain current and context-specific information;
- Promote the careful timing and sequencing of context-specific justice and reconciliation mechanisms;
- Promote access to relevant information for all stakeholders working on issues relating to the mandate;
- Establish linkages with the AU, including its Department for Political Affairs, the Peace and Security Council, the Office of Legal Counsel, the Panel of the Wise and the African Peer Review Mechanism to obtain support for his work.

With regard to the promotion of truth, the SR should:

- Promote best-practice guidelines or a framework for the development and implementation of inclusive and context-specific truth-seeking interventions;
- Advise local role players on various models of truth-telling, on the importance of the timing of truth-recovery processes, and on how truth can be recovered in the absence of formal accountability and other judicial mechanisms. This can help societies to decide which models are most suitable for their particular situations;

- Be open to and willing to inform stakeholders of, local and traditional mechanisms through which truth-telling can be pursued;
- Guide countries on how best to keep records of truth-telling processes;
- Promote comprehensive victim-protection and psychosocial support during and after truth-telling processes take place;
- Encourage the use of alternative spaces and media such as theatre, music, art and peace education to facilitate truth-telling;
- Promote the creation of a 'collective truth' so that even where there are divergent interpretations of the truth in a given context, due regard is accorded to all sides in order for a country to move forward.
- Encourage concerned authorities / parties to a conflict to take the necessary measures and steps to clarify the fate and whereabouts of missing persons.

With regard to the promotion of justice, the SR should:

- Consider and promote an awareness of the various forms of justice – retributive, restorative, and redistributive;
- Take an appropriately nuanced view of prosecutions and a range of justice-seeking mechanisms in the context of dealing with the past. Trials can be a determining factor in crystallising accountability and lay the foundations for reparations, but they are not necessarily helpful in all situations. In cases, such as Rwanda, a proliferation of trials has the potential to undermine reconciliation processes;
- Seek to balance attention given to trials of alleged perpetrators and that given to victims and affected communities;
- Inform victims about the legal rights and remedies available to them;
- Support regional African human-rights protection mechanisms by:
 - Promoting recourse to effective regional accountability mechanisms, such as the African Court of Justice and the African Commission on Human and Peoples' Rights;
 - Promoting regional treaties that provide legal remedies for victims, and raising awareness of these treaties among victims of human-rights violations;
- Seek the implementation of international criminal-justice provisions through domesticating the Rome Statute in national criminal jurisdictions;
- Raise objections if political processes encroach on international justice, and, where necessary, expose the limitations of domestic trials.

With regard to the promotion of reparations and guarantees of non-recurrence, the SR should:

- Insist on individual and collective reparations as an integral part of all processes for achieving peace, truth, justice and guarantees of non-recurrence;
- Promote consideration of victims' immediate, interim and long-term socio-economic and psychological needs. This must include raising awareness about reparations programmes, and managing expectations after a reparations policy has been developed and publicised;
- Encourage stakeholders to start reparations processes at a local level, even when the design and implementation of a national process may take time;
- Support the immediate provision of reparations to identifiable victims or groups to empower them to effectively participate in the development and implementation of further justice and reconciliation mechanisms;
- Prioritise economic and social development as part of every reparations programme;
- Document traditional mechanisms for conflict resolution, and explore culturally appropriate mechanisms for promoting reconciliation, making reparations and developing guarantees for non-recurrence.
- Promote peace education, especially the development and teaching of inclusive historical narratives;
- Prepare educational materials to guide states and individuals working towards guarantees of non-recurrence;
- Review the efficacy of existing international and institutional reparation programmes such

as the ICC's Trust Fund for Victims.¹⁷ If deemed necessary, lobby for and promote effective international mechanisms for reparations and consider establishing a Reparations Fund;

- Promote and/or perform needs assessments and the mapping out of legacies of violence.

The UNHRC should:

- Create a working group for this mandate, given that it comprises four individual pillars, all of which merit in-depth assessment in a number of countries around the world;
- Increase the budget allocation for Special Procedures mandate holders to enable in-depth investigations and research into targeted in-country situations;
- Streamline the process enabling civil-society organisations to gain accreditation and observer status at UNHRC meetings;
- Provide increased platforms for accredited African civil-society organisations to share their context-specific intelligence at UNHRC meetings.

Civil society should:

- Raise awareness about the mandate of the SR, and about how societies and countries can engage with him to ensure that as many people as possible have informed access;
- Play an ongoing and supportive role by feeding the SR short, detailed and concise information pertaining to relevant situations, by organising conferences and meetings relevant to the mandate, and by inviting the SR to attend non-official meetings in his personal capacity.

Governments should:

- Cooperate with the SR by issuing a standing invitation to the UNHRC or by engaging him actively when a country visit is requested
- Seek support from the SR on truth, justice, reparations and guarantees of non-recurrence, particularly if they are crafting a peace agreement or reforming their constitutions.

The African Union should

- Establish a working relationship with the SR by issuing invitations to relevant meetings of the AU pertaining to his mandate;
- Complement the mandate of the SR by developing an AU Policy Framework on justice and reconciliation.

The International Criminal Court should:

- Establish and build a working relationship with the SR, given that the mandates of the ICC and the SR have complementary aspects;
- Ensure that its Office of the Prosecutor and Registry works with the SR with regard to ICC-situation countries in Africa; specifically to coordinate efforts relating to the rights of victims to reparations.
- Engage in dialogue with the SR and the AU on establishing an ICC Liaison Office in Africa and dialogue with African civil society organisations that support and promote the mandate of the SR.

Endnotes

- 1 The full text of the resolution is available from http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/18/L.22
- 2 International Human Rights Law Institute. *The Chicago Principles on Post-Conflict Justice*, (2007). [Online]. Available at http://www.law.depaul.edu/centers_institutes/ihr/pdfs/Chicago_principles.pdf
- 3 All available at <http://www.au.int/en/treaties>
- 4 To access the concept note and final programme from the event, see <http://www.ijr.org.za/transitional-justice-in-africa-annual.php>
- 5 For more information, see http://www.ohchr.org/Documents/HRBodies/SP/SPVisualDirectory_Accessible.pdf
- 6 Office of the UN Commissioner for Human Rights. *Coordination Committee of Special Procedures* (2011). [Online]. Available at <http://www2.ohchr.org/english/bodies/chr/special/ccspecialprocedures.htm> [Accessed 21 May 2012].
- 7 For a list of countries that have extended standing invitations to all thematic special procedures, see <http://www.ohchr.org/EN/HRBodies/SP/Pages/Invitations.aspx> [Accessed 2 May 2012].
- 8 Resolution 18/7 of the Eighteenth Session of the UNHRC, 26 September 2011. Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence. [Online] Available at <http://daccess-dds-ny.un.org/doc/RESOLUTION/LTD/G11/163/88/PDF/G1116388.pdf?OpenElement>
- 9 For the complete list of tasks to be fulfilled by the mandate holder, see the UNHRC Resolution referred to in the previous note.
- 10 A full report, including transcripts of all presentations and discussions, will be available by July 2012.
- 11 See Astère Muyango, *L'opportunité de la mise en place de la Commission Vérité et Réconciliation au Burundi* [Opportunities for Setting Up a Truth and Reconciliation Commission in Burundi], Policy Brief No. 3, Institute for Justice and Reconciliation, December 2011, www.ijr.org.za
- 12 For a useful exploration of these institutions see L. Huyse and M. Salter (eds) *Traditional Justice and Reconciliation after Violent Conflict: Learning from African Experiences*. (Stockholm: International IDEA, 2008).
- 13 International Committee of the Red Cross *Customary International Humanitarian Law: Volume I, Rules*, (Cambridge: Cambridge University Press, 2005) Rule 117, p. 421.
- 14 For more info on the KNDR and the institutions born out of it, see <http://www.dialoguekenya.org/>.
- 15 United Nations Office of the High Commissioner for Human Rights. *Rule-of-Law Tools for Post-Conflict States: Reparations programmes*. HR/PUB/08/1. (New York and Geneva: United Nations, 2008); The African Union Constitutive Act [Online] Available at <http://www.au.int/>.
- 16 Ibid.
- 17 For further information on the Trust Fund for Victims, see <http://www.trustfundforvictims.org/>.

ABOUT THE INSTITUTE FOR JUSTICE AND RECONCILIATION



The Institute for Justice and Reconciliation (IJR) was launched in 2000 in the aftermath of South Africa's Truth and Reconciliation Commission with an aim of ensuring that lessons learnt from South Africa's transition from apartheid to democracy be taken into account in the interests of national reconciliation. IJR works with partner organisations across Africa to promote reconciliation and socio-economic justice in countries emerging from conflict or undergoing democratic transition. IJR is based in Cape Town, South Africa. For more information, visit <http://www.ijr.org.za>, and for comments or inquiries contact info@ijr.org.za.

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