Promoting Accountability through the Human Rights Bodies in Geneva

A Working Paper
for Civil Society Organizations

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Preface

Over the years the human rights agenda has grown from a marginal segment into a broad and comprehensive component in the pursuit of international justice. Together with peace, security and development, human rights are now affirmed as constituting one of the main pillars upon which the United Nations is built. As the result of an incremental process reflecting a widely shared sense of human dignity, an extensive network of human rights standards and human rights mechanisms came into being in the quest for political freedom and social justice. This network holds universal dimensions, encompassing all peoples and nations, with an operational focus in Geneva where the Office of the United Nations High Commissioner for Human Rights is established.

The present working paper prepared by the Swiss Association against Impunity (TRIAL) and the International Commission of Jurists (ICJ) seeks to identify and clarify the potentials of the Geneva-based human rights mechanisms and procedures, notably those operating under the authority of the Human Rights Council and in the context of the Human Rights Treaty Bodies, to promote accountability and to put an end to impunity pertaining to crimes under international law. Important guidance in this respect is provided by the United Nations Principles against Impunity and the United Nations Basic Principles and Guidelines on Remedy and Reparation, referred to in the present document as a "United Nations *acquis* relating to accountability and international justice."

The object of this working paper is closely associated with a number of principal considerations. First, the urgent need to prevent and combat more consistently and more effectively the perpetration of crimes under international law, including those amounting to gross human rights violations and serious violations of international humanitarian law. Further, the linkage and the corresponding functioning of international human rights law, international humanitarian law and international criminal law as constituent parts of the international justice system. And as a campaign model, the wish to promote a more frequent and incisive utilization of the potentials that exist under universal human rights standards and available human rights mechanisms so as to encourage and motivate States, Civil Society Organizations and other relevant stakeholders, each with their distinct and respective roles and responsibilities, to take their share in these endeavours.

While the present working paper addresses the potentials of the Geneva-based human rights mechanisms and procedures, it is at the same time mindful of the essential domestic implications of accountability related recommendations. Here too, at domestic levels, vigilant and committed actors, in particular National Human Rights Institutions, are expected to play an authoritative and influential role.

In sum, this paper is a ready tool to enhance the promotion of accountability and to use for that purpose a broad array of human rights mechanisms. It serves as a reference document and a campaign instrument designed to motivate, guide and assist committed and concerned actors. It must be regarded as a welcome and constructive asset in the pursuit of international justice.

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Executive Summary

A number of significant achievements in the fight against impunity must be registered. On the one hand, the adoption of the Rome Statute and the establishment of the International Criminal Court (ICC) represent the greatest advance in international criminal law in the last 60 years. However, universal acceptance of the ICC remains a primary, but still unfulfilled, objective in order to ensure that perpetrators of genocide, crimes against humanity and war crimes have no safe haven where they can avoid facing justice. While the Rome Statute of the ICC covers a range of serious offences, not all crimes under international law fall under its ambit (such as torture that does not amount to a crime against humanity or to a war crime). Nonetheless, States retain the obligation to investigate and prosecute and should, and in some instances, must provide for universal jurisdiction for crimes under international law, which is paramount to combating impunity. This obligation also forms part of the victims' right to an effective remedy and reparation for gross human rights violations and serious violations of international humanitarian law and a necessary platform towards the establishment of guarantees of non-repetition. Notably, a United Nations' *acquis* relating to accountability and international justice has been developed (in particular, the "UN Principles against Impunity" and the "UN Basic Principles and Guidelines on Remedy and Reparation") and must be duly taken into account, disseminated and implemented to ensure better results in these areas.

Since their inception, Geneva-based human rights bodies, including the Human Rights Council and many Special Procedures and Treaty Bodies, have to some extent dealt with issues related to accountability and impunity of perpetrators of crimes under international law, gross human rights violations, and serious violations of international law and formulated relevant observations and recommendations. Nevertheless, it would seem that the current landscape on these subjects is somewhat fragmented and not always coherent. At the same time, recommendations issued by the United Nations human rights bodies and mechanisms often have not been effectively followed-up by States and other relevant actors.

Persuaded that United Nations human rights bodies and mechanisms should more consistently and robustly be used to promote the universality of the Rome Statute, an effective system of universal jurisdiction, and, in general, the adoption of effective measures to ensure accountability of those responsible for crimes under international law, the International Commission of Jurists and TRIAL (*Swiss Association against Impunity*) analyse the existing avenues in Geneva to be used to promote accountability and the fight against impunity more broadly.

This working paper is directed at Civil Society Organizations seeking to promote accountability through human rights bodies in Geneva and, in particular, through the Human Rights Council, the Universal Periodic Review (UPR), Special Procedures and Treaty Bodies. A number of potential advocacy activities and initiatives are suggested, including:

- Advocating for the inclusion of **accountability and international justice related recommendations by the Human Rights Council in thematic and country-specific resolutions** (and, where applicable, in the mandate of Commissions of Inquiry); and for the systematic inclusion of similar recommendations by the **UPR**, strengthening the follow-up procedure;

- Advocating for the inclusion by **Special Procedures (both country and thematic mandates) of accountability and international justice related recommendations**, and, where appropriate, for the elaboration of thematic studies;

- Advocating for the inclusion by relevant **Treaty Bodies** of accountability and international justice related **recommendations in their concluding observations on country periodic reports** (and related follow-up reports), as well as for the elaboration of general comments on the issue. Where appropriate, develop litigation strategies of individual communications in order to obtain views/decisions that contain accountability and international justice friendly findings.

Introduction

The adoption of the Rome Statute and the establishment of the International Criminal Court (ICC) represent the greatest advance in international criminal law in the last 60 years. For the first time in history, a permanent judicial mechanism has been established to investigate and prosecute crimes that, in the words of the Rome Statute itself, "shock the conscience of humankind". At the time of writing, more than 120 States – almost two thirds of United Nations member States – have ratified or acceded to the Rome Statute. This is a remarkable achievement. However, universal acceptance of the ICC remains a primary, but still unfulfilled, objective in order to ensure that perpetrators of genocide, crimes against humanity and war crimes have no safe haven where they can avoid facing justice. Furthermore, it is essential that States implement their obligations under the Rome Statute in domestic law and cooperate fully with the ICC.

While the Rome Statute covers a range of serious offences, not all crimes under international law[1] fall under its ambit. For instance, acts of torture or enforced disappearance that are not committed within the wider definition of backdrop of war crimes or crimes against humanity will not attract the jurisdiction of the ICC.

Nonetheless, essential to combating impunity, States retain the obligation to ensure prompt, independent, and effective investigation and, where appropriate, prosecution and sanction. This obligation also forms part of the rights of victims to an effective remedy and reparation for human rights violations, including those pertaining to gross human rights violations or serious violations of international humanitarian law. Further States must provide for universal jurisdiction[2] over some crimes under international law (genocide, torture, enforced disappearance, and grave breaches of the 1949 Geneva Conventions), and should also endeavour to do so in respect of all crimes under international law.

The struggle against impunity for crimes under international law requires, for one thing, that States undertake the measures necessary to enable their courts to exercise jurisdiction over crimes under international law. Indeed, complementarity is one of the foundational principles of the system established under the Rome Statute, according to which the ICC is a court of "last resort" and will step in only where national jurisdictions have failed to effectively address the crimes under the Rome Statute.

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[1] In this paper the phrase "crimes under international law" is used in a sense that covers, but is not necessarily limited to the crimes described in the definition of "serious crimes under international law" under the UN Principles against Impunity, namely "the phrase 'serious crimes under international law' encompasses grave breaches of the Geneva Conventions of 12 August 1949 and of Additional Protocol I thereto of 1977 and other violations of international humanitarian law that are crimes under international law, genocide, crimes against humanity, and other violations of internationally protected human rights that are crimes under international law and/or which international law requires States to penalize, such as torture, enforced disappearance, extrajudicial execution, and slavery". Notably, the terms of this definition are non-exhaustive.

[2] In this paper "universal jurisdiction" refers to the competence of national courts to try persons accused of crimes under international law, without regard to where the crime was committed, the nationality of the alleged or convicted perpetrator, the nationality of the victim, or any other connection to the State exercising such jurisdiction.

States should generally adapt their domestic legislation to include the crimes recognized in the Rome Statute, in accordance with their definition as well as the modes of responsibility as provided under the Rome Statute. States parties must arrest and investigate, or in the alternative surrender, any individuals who are found in their territory and in respect of whom there is a request from the Court. They must do so in accordance with the procedures laid out in the Rome Statute. In cases where there is credible evidence of individual responsibility for crimes under international law, States should institute criminal proceedings against the persons concerned who are found in their territory. Alternatively, States must extradite or otherwise transfer the suspects for potential prosecution before another national, international or internationalized (hybrid) tribunal governed by international fair trial standards.

Universal jurisdiction, through domestic courts or other international tribunals, should complement the function of the ICC by ensuring that perpetrators of crimes under international law are brought to justice. For crimes under international law that are outside of the subject matter jurisdiction of the ICC, domestic criminal justice systems must step in.

United Nations and regional human rights bodies should therefore be used to promote the normative principle of universal jurisdiction; crimes under international law; universal adherence to the Rome Statute; the adoption of adequate domestic legislation that ensures effective cooperation with other States and with the ICC; and an adequate and effective system for the implementation of universal jurisdiction over crimes under international law.

I. The Goal of Promoting Accountability through the United Nations Human Rights System

As a preliminary remark, it must be noted that the word "accountability" is a broad concept, which may encompass political or legal accountability, and with a range of possible criminal, civil and administrative consequences. All violations of international law by States give rise to some form of accountability. However, the focus of this paper is accountability in the context of the fight against impunity, particularly the accountability of individuals responsible for crimes under international law, gross violations of human rights and serious violations of international humanitarian law. The present paper takes as a basic assumption that all human rights monitoring mechanisms and bodies in Geneva must address the responsibility of States to hold perpetrators to account. This responsibility arises because States are parties to international treaties, including human rights treaties, and the Charter of the United Nations.

Under international law, States generally are able to assume jurisdiction for crimes under international law, even if the criminal conduct did not take place on their territory, and they should seek to exercise this jurisdiction in the fight against impunity. For certain crimes, international treaties provide expressly for the exercise of such jurisdiction as a matter of obligation, including the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment; the Convention on the Prevention and Punishment of the Crime of Genocide; the International Convention on the Protection of All Persons from Enforced Disappearance; and the 1949 Geneva Conventions.

A number of measures may be taken by international stakeholders to promote accountability more broadly through human rights bodies in Geneva.

Over the past years, a United Nations' *acquis* relating to accountability and international justice has been developed and must be duly taken into account when engaging in the struggle against impunity. Of particular importance in this context are the:

- Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity ("**UN Principles against Impunity**"), recommended by the United Nations Commission on Human Rights resolution 81/2005 of 21 April 2005; and

- Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law ("**UN Basic Principles and Guidelines on Remedy and Reparation**"), adopted by General Assembly resolution 60/147 of 16 December 2005.

Both the UN Principles against Impunity and the UN Basic Principles and Guidelines on Remedy and Reparation must be further disseminated among States and recommendations to States to

duly implement them would certainly foster the promotion of accountability. Furthermore, recommendations to promote accountability more broadly should be assessed and shaped on a case-by-case basis and they may include:

Strengthening Domestic Legislation to Promote Accountability

- Ensure that national legislation codifies the crimes of torture and enforced disappearance as separate offences in line with international standards. Such conducts should be criminalized when the acts are committed as part of a widespread or systematic attack against any civilian population (i.e. crimes against humanity) or when torture, or other proscribed ill-treatment, is committed as a war crime, as well as when such crime is committed outside the situation of armed conflict.[3]
- Ensure that national legislation codifies other forms of ill-treatment and extrajudicial, summary or arbitrary executions in accordance with international standards.
- Ensure that national legislation codifies as a separate criminal offence the recruitment and use in hostilities of children under the age of 18 by armed forces and armed groups in general and fully reflects international standards concerning investigation and prosecution of gender-based violence, including by defining all recognised forms of crimes of sexual violence, (including: rape, sexual slavery, enforced pregnancy, forced prostitution, forced sterilization – including penile amputation-, forced nudity, mutilation of genitals and breasts, forced circumcision and other sexual assaults not involving penetration).
- Ensure that national legislation codifying crimes under international law provides for appropriate penalties proportionate to the gravity of the crimes concerned and excludes the possibility of application of the death penalty.
- Ensure that national legislation establishes that crimes under international law are not subjected to any statute of limitations, and that the official status of a person alleged to be responsible for crimes under international law, gross human rights violations and serious violations of international humanitarian law does not exempt him or her from criminal or civil liability and is not grounds for a reduction of sentence.
- Ensure that national legislation does not allow critical information or documentary evidence to be withheld on the basis of State secret; confidentiality of the information (except where strictly necessary to protect the rights of children under 18, consistent with the Convention on the Rights of the Child); or reasons of public interest or national security, in any judicial or administrative proceedings concerning crimes under international law.
- Ensure that national legislation does not allow persons alleged to be responsible for crimes under international law and gross human rights violations to benefit from any immunity, amnesty law or similar laws or measures that might preclude criminal or civil prosecution or sanctions.

[3] See, in particular, Rome Statute on the Establishment of an International Criminal Court: Articles 7(f), 8(2)(a)(ii), 8(2)(c)(i). On sexual violence Articles 7(1)(g),8(2)(b)(xii), 8(2)(d)(vi). On great suffering or serious injury to body or health Articles (8(2) (a) (iii). On humiliating and degrading treatment Articles 8(2)(b)(xxi) and 8(2)(c)(ii).

- Ensure that national legislation does not allow the trial of persons alleged to be responsible for crimes under international law and gross human rights violations by military courts, or by other specialized courts that do not meet the requisites of a competent, independent and impartial tribunal under international standards.
- Ensure that national legislative and policy frameworks include systems for witness protection and support and victim participation to the extent possible.
- Ensure sufficient human and material resources for the effective and efficient investigation, prosecution, defence and adjudication of crimes under international law, including the establishment of special units in police and prosecutorial services if necessary.
- Ensure that victims of crimes under international law and human rights violations, including those pertaining to gross human rights violations or serious violations of international humanitarian law, have access to an effective remedy, including a judicial remedy, and full reparation, including restitution, satisfaction, compensation, rehabilitation, and guarantees of non-repetition.
- Ensure that the right to truth of victims, their families and society as a whole to know the circumstances in which the crimes took place is respected.

Promoting Accountability through Universal Jurisdiction

- Ensure that national legislation allows ordinary tribunals to exercise their jurisdiction over persons found in any territory under the State's jurisdiction alleged to be responsible for genocide, crimes against humanity, war crimes, enforced disappearance, summary, arbitrary or extra-judicial executions, and torture or other cruel, inhuman or degrading treatment,[4] unless such persons are extradited or surrendered to another State, the ICC or other international criminal tribunals. Remind States as to the legal obligations that may obtain in this respect, for example under the Convention against Torture; the Convention on the Prevention and Punishment of the Crime of Genocide; the International Convention on the Protection of All Persons from Enforced Disappearance; and the 1949 Geneva Conventions.
- Ensure that persons subject to prosecution for crimes under international law receive a fair trial by a competent, independent and impartial tribunal established by law.
- Provide for the exercise of universal jurisdiction over crimes under international law in national legislation, i.e. allowing criminal and civil proceedings concerning crimes under international law conducted outside of a State's territory even if there is not necessarily a link to the State by the nationality of the suspect or the victim or by harm to the State's own national interests.
- Ensure that the jurisdiction of domestic tribunals over persons alleged to be responsible

[4] The inclusion of summary, arbitrary or extra-judicial executions and other cruel, inhuman or degrading treatment among crimes under international law is supported both by the Human Rights Committee and the Committee against Torture. See respectively General Comment No. 31 (2004), para. 18; and General Comment No. 2 (2007).

for crimes under international law is exercised also in the absence of an extradition request, or a lawful extradition, respecting the principle of *non-refoulment*.

- Ensure that domestic tribunals exercise jurisdiction over persons alleged to be responsible for crimes under international law is not unduly limited by excessively strict requirements such as the fact that the suspect be normally resident in the State concerned, or the double criminality requirement in extradition law.

Promoting the Universal Ratification of/Accession to the United Nations Core Human Rights Treaties, the Acceptance of the Competence of Treaty Bodies and the Acceptance and Implementation of their Views and Recommendations

- Accede to/ ratify, without reservations, the United Nations core human rights treaties and their Additional/Optional Protocols.[5] Where appropriate, make the necessary declarations to recognize the competence of United Nations Treaty Bodies to receive and consider individual and inter-state communications. This may, for example, give victims of crimes under international law and gross human rights violations another recourse when there is no prospect of justice at the domestic level or access to an international criminal tribunal.
- Adhere to the reporting requirement and implement the recommendations by Treaty Bodies with respect to the periodic review of State compliance with the respective treaties.
- Respect the views of Treaty Bodies pursuant to the adjudication of individual communications, with a view to ensuring that victims of violations obtain an effective remedy and reparation.

Promoting the Universal Acceptance of the ICC and Measures of Effective Cooperation

- Accede to/ratify the Rome Statute, and the Agreement on Privileges and Immunities of the Court (APIC).[6]
- Accede to/ratify the Kampala Amendments[7] to the Rome Statute.
- Fully align national legislation with all obligations under the Rome Statute, including providing for effective cooperation with the ICC as set out in the Rome Statute, providing for the criminalization of all crimes under Articles 6-8 of the Rome Statute, and defining genocide, crimes against humanity, and war crimes in accordance with the Rome Statute and the Elements of Crimes.
- Conclude specialized agreements with the ICC on the enforcement of sentences, and witnesses protection and relocation.

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[5] For a comprehensive list see http://www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx.

[6] The APIC is a separate treaty, designed to provide officials and staff of the ICC with certain privileges and immunities necessary for them to perform their duties in an independent and unconditional manner. States that are not parties to the Rome Statute can nonetheless ratify/accede to the APIC.

[7] At the Review Conference held in Kampala in 2010, amendments were adopted relating to the prohibition of the use of certain weapons in a non-international armed conflict (Art. 8.2.e), and to the crime of aggression (Art. 8 bis).

- Fully cooperate with the ICC by executing pending ICC arrest warrants against suspects present in the territory of a State party or a State obliged to cooperate with the ICC under a United Nations Security Council resolution.
- Make regular voluntary contributions to the ICC Trust Fund for Victims and other special funds; honour past donor pledges such as those made at the Kampala ICC Ten Year Review Conference in 2010.
- Strengthen political and diplomatic support to the ICC.

Further reflection and relevant recommendations could also refer to the following subjects:

- Initiatives and statements by some States and other actors, including the African Union, which may serve effectively to undermine the ICC;
- Low ratification/accession rates for the Rome Statute in the Middle East and North Africa, and, to a lesser extent, the Asia Pacific region;
- Non-cooperation with the ICC, including by non-States parties; and
- Enhanced interaction of the ICC Principals[8] and the President of the Assembly of the States parties with Geneva-based human rights bodies.

[8] This expression indicates the President of the ICC, the Prosecutor, the Registrar and their deputies.

II. Avenues Available in Geneva to Promote Accountability

The working paper is directed at Civil Society Organizations (CSOs) and other stakeholders seeking to promote accountability and international justice through human rights mechanisms. In each section, a number of potential advocacy activities/initiatives are suggested. The list of potential activities/initiatives is not presented according to a specific priority order. This should be assessed by users of the paper who should determine which activities/initiatives are more appropriate, feasible and in line with their respective strategy and priorities.

The following sections of the paper aim at presenting in summary the mandate of United Nations human rights mechanisms and bodies, how each of these organs can be utilized for promoting accountability; and at setting specific suggestions in this regard.

A) The Human Rights Council

Since its establishment in 2006 as the successor body to the disestablished Commission on Human Rights, the Human Rights Council,[9] made up of 47 United Nations member States, has a mandate to strengthen the promotion and protection of human rights, to address situations of human rights violations and make recommendations. The Human Rights Council holds both regular sessions (no less than three per year for a total of at least 10 weeks) and special sessions (typically aimed at addressing human rights emergencies).

During its sessions, the Human Rights Council debates thematic and country-specific human rights issues, and reports received from Special Procedures (independent experts mandated to examine and report on themes and countries);[10] holds special panel discussions and adopts thematic and country-specific resolutions. Currently, a number of thematic resolutions, many with dedicated independent experts, touch on issues that are related to accountability and international criminal justice, including enforced disappearance, summary, arbitrary or extra-judicial executions, torture or other cruel, inhuman or degrading treatment, promotion of truth, justice, reparations and guarantees of non-reoccurrence, right to truth and transitional justice. However, none of these mandates is solely dedicated to the questions of accountability and impunity.

The Human Rights Council also mandates the United Nations High Commissioner for Human Rights to submit reports on specific issues (e.g. the report on the obligation of States to investigate serious violations of human rights, and the use of forensic genetics).

The Human Rights Council counts on an Advisory Committee,[11] composed of 18 independent experts, that provides expertise and advice on thematic human rights issues, focusing mainly on studies and research-based advice.

In recent years, the Human Rights Council has also established a number of fact-finding

[9] For more information: http://www.ohchr.org/EN/HRBodies/HRC/Pages/HRCIndex.aspx.
[10] *Infra*, para. II.C).
[11] For more information: http://www.ohchr.org/EN/HRBodies/HRC/AdvisoryCommittee/Pages/HRCACIndex.aspx.

missions and commissions of inquiry (e.g. on Syria, the Democratic People's Republic of Korea, Lebanon, Palestinian territories occupied since 1967, Darfur-Sudan, the Democratic Republic of Congo, Libya and Cote d'Ivoire) mandated to investigate alleged violations of international human rights and international humanitarian law in a given period and country. These mechanisms are typically tasked to establish the facts and circumstances that may amount to such violations and crimes and, where possible, to identify those responsible with a view to ensuring that perpetrators of violations, including those that may constitute crimes under international law, are held accountable. In countries on which the Office of the Prosecutor of the ICC had been mandated to investigate crimes under international law (e.g. Libya), the commission of inquiry has consulted with the Office. Commissions of inquiry eventually issue reports containing conclusions and recommendations and in some cases compile evidence and lists of persons who should be investigated concerning alleged criminal responsibility.

Moreover, the Human Rights Council has a complaint procedure (formerly known as "1503 procedure" and currently regulated by resolution 5/1 of 18 June 2007),[12] which addresses communications submitted by individuals, groups, or CSOs concerning consistent patterns of gross and reliably attested violations of all human rights and fundamental freedoms occurring in any part of the world and under any circumstances. This procedure is confidential. Since the establishment of the Human Rights Council in 2006, thousands of complaints each year have been submitted to the procedure, with a total of only 14 complaints ultimately referred to the Council, of which only two referrals were made public. Two of the 14 complaints resulted in recommendations in 2012 for the Office of the High Commissioner for Human Rights to increase technical cooperation and capacity building assistance to the country concerned (Iraq); one complaint resulted in an encouragement by the Council in 2006 for the new government of the State concerned (Kyrgyzstan) to investigate and address the allegations; and one complaint resulted in a referral of the situation to the Special Rapporteur on Eritrea in 2012.

[12] For more information: http://www.ohchr.org/EN/HRBodies/HRC/ComplaintProcedure/Pages/HRCComplaintProcedureIndex.aspx.

Ideas for Advocacy

- Advocate for the introduction of a **periodic thematic resolution** by the Human Rights Council on accountability and international justice.
- Advocate for the inclusion of **accountability related recommendations in thematic resolutions** (e.g. those relating to torture or other cruel, inhuman or degrading treatment, summary, arbitrary or extra-judiciary executions, prevention of genocide, enforced disappearance, arbitrary detention, transitional justice, right to truth, and the administration of justice). These recommendations may concern the ratification of or accession to core United Nations human rights treaties, the Rome Statute, the APIC and the Kampala Amendments; the adoption of adequate domestic legislation necessary to implement the Rome Statute and provide for the criminalization in domestic law of all crimes under international law and effective measures to cooperate with the ICC, including, where appropriate, the execution of outstanding arrest warrants. These resolutions could also be used to promote universal jurisdiction and related issues and reference to the UN Principles against Impunity and the UN Basic Principles and Guidelines on Remedy and Reparation should be included.
- Ensure that accountability related thematic mandates make **reference**, in preambular and operational paragraphs, **to the UN Principles against Impunity and the UN Basic Principles and Guidelines on Remedy and Reparation**.
- Advocate for the inclusion of **accountability related recommendations in resolutions on specific countries**. These recommendations may include the prompt ratification of or accession to United Nations core human rights treaties, the Rome Statute, the APIC, and the Kampala Amendments; the adoption of adequate domestic legislation necessary to implement the Rome Statute and provide for the criminalization of all crimes under international law. Recommendations concerning universal jurisdiction, the execution of outstanding ICC arrest warrants, and the amendment of domestic legislation may also be appropriate for certain countries. Recommendations should include requesting States to implement the UN Principles against Impunity and the UN Basic Principles and Guidelines on Remedy and Reparation.
- Advocate for the **inclusion in the mandate of the commissions of inquiry of the possibility to propose appropriate international or national justice mechanisms** where they have found that crimes under international law have taken place.
- **Engage with commissions of inquiry**, submitting relevant information relating to crimes under international law in the country concerned, and, where appropriate, advocating for the inclusion of recommendations concerning the ratification of or accession to United Nations core human rights treaties, the Rome Statute, the APIC and the Kampala Amendments; the adoption of adequate domestic legislation, as well as of effective measures to cooperate with the ICC, and the full implementation of the UN Principles against Impunity and the UN Basic Principles and Guidelines on Remedy and Reparation.
- Advocate for the consideration of the **establishment of thematic or country-specific mandates concerning "the fight against impunity"**.
- Advocate for the Human Rights Council to **task the United Nations High Commissioner for Human Rights to produce a report on accountability**, including issues related to the Rome Statute, its implementation and effective cooperation with the ICC. A section of the report could be devoted to identifying good practices concerning universal jurisdiction over crimes under international law and the implementation of the UN Principles against Impunity and the UN Basic Principles and Guidelines on Remedy and Reparation.
- Organize **side-events** during Human Rights Council sessions, inviting members of the Council, as well as concerned States and other stakeholders to hold thematic discussions and debates on accountability, international justice, and universal jurisdiction over crimes under international law.
- Consider, where appropriate, the submission to the Human Rights Council of **complaints concerning consistent patterns of gross and reliably attested human rights violations**.

B) The Universal Periodical Review (UPR)

The UPR[13] involves a periodic review, in principle every four years, of the human rights records of all United Nations member States. Reviews are conducted by the UPR Working Group (composed of the 47 members of the Human Rights Council), although any United Nations member State can take part in the dialogue with the reviewed State, including making recommendations. Each reviewed State is assisted by a three-State Working Group ("troika"), which serves as rapporteur.

The first cycle of the UPR, covering all United Nations member States, ended in 2011. The second cycle of the UPR, which officially started in May 2012, will see 42 States reviewed each year (14 States will be reviewed at each of the three sessions that take place every year). During the second cycle of the UPR, States are expected to report on the measures they have undertaken to implement recommendations issued during the first cycle.

The UPR has already been used by a significant number of States to include recommendations concerning the Rome Statute and cooperation with the ICC (e.g. review of Algeria, UN Doc. A/HRC/21/13 of 5 July 2012, para, 129.1). During the first cycle of the UPR, ICC States parties participating in the UPR issued more than 100 recommendations to more than 60 States in relation to the ICC – the majority of which related to the ratification of or accession to the Rome Statute on the basis of para. 2 of Human Rights Council Resolution 5/1 (2007).

These recommendations have been influential in generating discussion on international justice at both the national level and in other United Nations fora; in strengthening membership of the ICC; and in increasing the effectiveness of domestic legal systems in dealing with national investigations and prosecutions of crimes against humanity, genocide, and war crimes.

In advance of the second cycle of the UPR, the Coalition for the International Criminal Court launched a campaign to encourage ICC States parties to make ICC related recommendations to other States coming under review, in particular on accession to/ratification of the Rome Statute and of the APIC as well as their implementation in national legislations.

In the first two sessions held in 2012 alone, more than 30 ICC States parties made more than 90 recommendations on the ICC to 22 States under review. The UPR has also been used more generally in addressing the question of impunity, promoting accountability and prompting States to implement human rights obligations in respect of crimes under international law (among the many possible examples, see the recommendations to Guatemala, UN Doc. A/HRC/22/8 of 31 December 2012, paras. 99.61, 99.63, 99.66 and 99.74; recommendations to Algeria, UN Doc. A/HRC/21/13 of 5 July 2012, paras. 129.47 and 129.93; and recommendations to the Philippines, UN Doc. A/HRC/21/12 of 9 July 2012, paras. 129.15, 129.16, 129.26, 129.29 and 129.30).

[13] For more information: http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx.

However, the UPR working, thus far over the course of second cycle, has so far failed to follow-up meaningfully on the implementation of the recommendations made during the first cycle.

Ideas for Advocacy

- **Review State-implementation of accountability and ICC related recommendations issued during the first cycle.** These issues should be raised during the review of the States concerned during the second cycle, through questions and comments.
- **Assess the status of domestic legislation on universal jurisdiction** over crimes under international law and other accountability and international justice related issues.
- Prior to the examination of a State, CSOs may **submit information** (known as "documentation by other stakeholders") relating to ratification or accession to United Nations core human rights treaties, the Rome Statute, the APIC, the Kampala Amendments, and the adoption of adequate domestic legislation codifying crimes under international law and assuring cooperation with the ICC in the given country. The report could also include information on the status of domestic legislation on universal jurisdiction over crimes under international law, and the implementation of the UN Principles against Impunity and the UN Basic Principles and Guidelines on Remedy and Reparation.
- In advance of the review, CSOs can **encourage States to make specific recommendations** on the issues above. They can also encourage them to ask questions on the advances made.

  When the UPR Working Group holds its session, CSOs can organize "**information meetings on the UPR process**", with a view toward sharing information and best practices, mainly on issues related to the ICC, accountability, and to universal jurisdiction over crimes under international law.
- CSOs also have a role in **monitoring the recommendations** issued at the end of the review process and the answers provided by the State under review. The latter can be used for further follow-up advocacy and lobbying.

C) Special Procedures

The Special Procedures[14] mechanisms of the Human Rights Council are composed of independent human rights experts that report and advise on human rights from a thematic or country-specific perspective (they may be individual mandates - called Special Rapporteurs, Independent Experts or Special Representatives –, or collective mandates – called working groups).[15] The tasks carried out by each Special Procedure are defined in the respective resolutions creating or extending its mandate. For the purposes of this paper, those Special Procedures whose mandate is considered as especially critical to accountability in relation to impunity for crimes under international law, gross human rights violations and serious violations of international humanitarian law are considered. Nevertheless, it is noteworthy that also other thematic and country mandates may be relevant and should be engaged, as appropriate (e.g. the Special Rapporteur on trafficking in persons, especially women and children; the Special Rapporteur on the human rights of migrants; the Independent Expert on

[14] For more information: http://www.ohchr.org/EN/HRBodies/SP/Pages/Welcomepage.aspx.

[15] This paper will not deal with Special Representatives of the UN-Secretary-General (http://www.un.org/sg/srsg/other.shtml). It is nevertheless noteworthy that some of these mandates, that may also be on specific countries, deal with subjects related to accountability and impunity (e.g. children and armed conflict, prevention of genocide, sexual violence in conflict and violence against children).

minority issues; the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; the Special Rapporteur on contemporary forms of slavery, including its causes and consequences; and the Special Rapporteur on the rights of indigenous peoples).

Among other tasks, Special Procedures undertake country visits; act on individual cases and concerns of structural nature by receiving information from a range of sources and sending communications to States; and conduct thematic studies.

No formal mechanism of cooperation between the various Special Procedures and the ICC or any other international justice body yet exists, although, as the sections below will explain, there has been some ad hoc reference to the Rome Statute and the ICC.

In 2005 a **Coordination Committee of Special Procedures** was established.[16] Its principal role is "identified in the contribution to the ability of individual experts to carry out their mandates in the most effective way and to promote the standing of the Special Procedures within the broader framework of the United Nations". The Coordination Committee is composed of six mandate holders who are elected by the annual meeting of Special Procedures mandate holders.

Since 1999, the chairpersons of United Nations Treaty Bodies have convened an annual meeting jointly with Special Procedures mandate holders, with a view, among other things, to increasing the exchange of information between these mechanisms.

Ideas for Action

- Advocate for the **inclusion among the issues discussed by the Coordination Committee of potential cooperation between Special Procedures and the ICC**, as well as the role to be played by Special Procedures in the promotion of accountability.
- Organize a **parallel event** to the meeting between the Coordination Committee and the chairpersons of Treaty Bodies, to discuss the possibilities for cooperation between Committees, Special Procedures and the ICC, and the potential role to be played by Treaty Bodies and Special Procedures on international justice.

a) Country Mandates

Currently, the Human Rights Council counts on 13 country-mandates (Special Rapporteurs on the Situation of Human Rights in Belarus, Cambodia, Eritrea, the Democratic Peoples' Republic of Korea, Iran, Myanmar, the Palestinian territories occupied since 1967, and the Syrian Arab Republic; and Independent Experts on the Situation of Human Rights in Cote d'Ivoire, Mali, Somalia, Haiti, and Sudan).[17] The number of mandates is variable over time, new mandates are established and others not renewed.

[16] For more information: http://www2.ohchr.org/english/bodies/chr/special/ccspecialprocedures.htm.
[17] For more information: http://www.ohchr.org/EN/HRBodies/SP/Pages/Countries.aspx.

There is no uniformity among the various Special Procedures country mandates. Many, but not all of the Special Procedures concerned report on the actual human rights situation in the concerned countries and are competent to analyse domestic legislation concerning universal jurisdiction over crimes under international law.

Out of the 13 countries concerned:

- Only Mali[18] has ratified both the Rome Statute and the APIC;
- Cambodia and Cote d'Ivoire[19] ratified the Rome Statute, but have not ratified/acceded to the APIC;
- Eritrea, Iran, Syria, Haiti and Sudan[20] have only signed but not ratified or acceded to the Rome Statute or the APIC;
- Belarus, the Democratic People's Republic of Korea,[21] Somalia, Myanmar, Palestine[22] and Israel have not signed or ratified/acceded to the Rome Statute or the APIC.

The Human Rights Council, in the resolutions establishing some of the above-mentioned Special Procedures (e.g. Cote d'Ivoire, resolution 17/21, para. 4), has referred in at least manner to issues related to the Rome Statute and the ICC.

With regard to the United Nations core treaties, the situation of the 13 specific countries here concerned is the following:

- International Covenant on Civil and Political Rights: only Myanmar is not a party to the Covenant;
- First Optional Protocol to the International Covenant on Civil and Political Rights: Mali, Cote d'Ivoire, Belarus and Somalia are parties, while Cambodia has only signed;

[18] On 13 July 2012, acting pursuant to Art. 14 of the Rome Statute referred to the Prosecutor crimes against humanity and war crimes law perpetrated in the North of the country from January 2012 onwards, given that domestic courts are unable to prosecute those responsible. The Office of the Prosecutor duly announced the opening of an investigation into the situation in Mali. Currently, no arrest warrant has been issued.

[19] On three occasions, Cote d'Ivoire made a declaration pursuant to Art. 12(3) of the Rome Statute accepting the jurisdiction of the ICC to investigate possible crimes under international law from 2002-2010. On 3 October 2011, the Pre-trial Chamber of the ICC granted the Prosecutor authorisation to open an investigation into the situation in Cote d'Ivoire. To date, two arrest warrants have been issued.

[20] The UN Security Council referred the situation in Darfur, Sudan to the ICC Prosecutor. On 6 June 2005, the Office of the Prosecutor opened an investigation. To date, four arrest warrants have been issued.

[21] On 6 December 2010, the Office of the Prosecutor confirmed it had opened a preliminary examination into the situation in the Republic of Korea concerning alleged war crimes committed in South Korean territory by DPRK (North Korean) forces. The outcome of this preliminary examination is ongoing as of September 2013.

[22] On 22 January 2009, the Palestinian Authority made a declaration pursuant to Art. 12(3) of the Rome Statute accepting the jurisdiction of the ICC to investigate possible crimes under international law during the 2008-09 Gaza-Israeli war. In April 2012, the Office the Prosecutor suspended its preliminary examination of the situation in Palestine, deferring to the Assembly of States Parties of the ICC, the UN General Assembly or another body to resolve the question of whether Palestine is a state before it could proceed to with its assessment of pre-conditions to the exercise of ICC jurisdiction – namely the validity of the Art. 12(3) declaration and further questions of admissibility. In November 2012, the UN General Assembly passed a resolution granting Palestine non-member state observer status. Irrespective of whether the ICC Office of the Prosecutor will soon reconsider the status of the 2009 declaration, it is likely that accession to the Rome Statute or another Art. 12(3) declaration by Palestine would be required to grant the ICC jurisdiction over crimes committed after the 2008-09 war, whether on the territory of Palestine or attacks launched from there into southern Israel, given the temporal limitations on the January 2009 declaration. On 4 May 2013, the Prosecutor of the ICC received a referral from the Union of the Comoros, "with respect to the 31 May 2010 Israeli raid on the Humanitarian Aid Flotilla bound for Gaza Strip". The outcome of this preliminary examination is ongoing as of September 2013.

- Second Optional Protocol to the International Covenant on Civil and Political Rights: none of the States concerned is a party or has even signed the Optional Protocol;
- Convention against Torture: Mali, Cambodia, Syria, Cote d'Ivoire, Belarus, Somalia and Israel are parties, but none of them recognized the competence of the Committee against Torture to receive and examine communications. Sudan has only signed;
- Optional Protocol to the Convention against Torture: only Cambodia and Mali are parties;
- International Convention on the Protection of All Persons from Enforced Disappearance: Mali ratified the Convention and recognized the competence of the Committee on Enforced Disappearances with regard to communications; Haiti has signed the Convention; all other States concerned have failed to sign or ratify/accede to the Convention;
- Convention on the Rights of the Child: all the States concerned are parties, except for Somalia, which has signed only;
- Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict: Mali, Cambodia, Eritrea, Cote d'Ivoire, Syria, Sudan, Belarus and Israel are parties; while Iran, Haiti and Somalia have only signed;
- Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography: Mali, Cambodia, Eritrea, Cote d'Ivoire, Syria, Iran, Sudan, Belarus, Myanmar and Israel are parties; while Haiti has only signed;
- Optional Protocol to the Convention on the Rights of the Child on a communication procedure: none of the States concerned is a party. Mali has only signed;
- Convention on the Elimination of Discrimination against Women: Iran, Somalia and Sudan are not parties;
- Optional Protocol to the Convention on the Elimination of Discrimination against Women: Eritrea, Iran, Syria, Haiti, Sudan, the Democratic People's Republic of Korea, Somalia, Myanmar and Israel are not parties;
- International Covenant on Economic, Social and Cultural Rights: only Haiti and Myanmar are not parties to the Covenant;
- Optional Protocol to the International Covenant on Economic, Social and Cultural Rights: only Mali has signed but has not ratified or acceded to the Optional Protocol.

Ideas for Advocacy related to Country Mandates

- Advocate for **accountability and ICC related recommendations** to the countries concerned. These recommendations may include the ratification of or accession to the Rome Statute, the APIC and the Kampala Amendments, as well as the relevant human rights core treaties not yet ratified/acceded to and the recognition of the competence with regard to communications of United Nations Treaty Bodies; the adoption of adequate domestic legislation and of effective measures to cooperate with the ICC, including, where appropriate, the execution of pending ICC arrest warrants; and the adoption of adequate domestic legislation on universal jurisdiction. Recommendations should also concern the implementation of the UN Principles against Impunity and the UN Basic Principles and Guidelines on Remedy and Reparation.
- Advocate for the examination of issues of **cooperation and complementarity** with the ICC. In particular, the Special Procedures on Sudan and Cote d'Ivoire should raise the issue of **unexecuted arrest warrants** with the respective governments.
- Make sure that in the **resolutions renewing or extending the respective mandate**, Rapporteurs/Independent Experts are mandated to provide **technical assistance** to the State concerned on accountability related issues and to include a section on these issues in their reports to the Human Rights Council. Specific recommendations on these issues to the governments concerned should be included in the same resolutions.
- Submit **specific reports** to these Special Procedures containing an analysis of domestic legislation on issues related to accountability and, in particular, on universal jurisdiction over crimes under international law.

b) Thematic Mandates

1) Working Group on Enforced or Involuntary Disappearances (WGEID)

The WGEID, composed of five independent experts, holding three sessions per year,[23] assists relatives to ascertain the fate and whereabouts of their "disappeared" family members. It also monitors the States' progress adhering to international law and standards related to enforced disappearance, including those deriving from the Declaration on the Protection of All Persons from Enforced Disappearance (the 1992 Declaration).

When it receives credible information on alleged human rights violations falling under its mandate, the WGEID may send to governments "urgent appeals"[24] or "letters of allegations"[25] requesting information and comments on the allegations and the necessary preventive or investigative measures be taken.

The WGEID conducts country visits and adopts reports containing conclusions and recommendations (where it often included recommendations concerning the ratification of or accession to the Rome Statute, e.g. report on the mission to Morocco, UN Doc.

[23] For more information: http://www.ohchr.org/EN/Issues/Disappearances/Pages/DisappearancesIndex.aspx.
[24] "Urgent appeals" are used to communicate information about a violation that is allegedly ongoing or about to occur. The intention is to ensure that the appropriate State authorities are informed as quickly as possible of the circumstances so that they can intervene to end or prevent a human rights violation.
[25] "Letters of allegation" are used to communicate information about violations that are said to have already occurred and whose impact on the alleged victim can no longer be changed.

A/HRC/13/31/Add.1 of 9 February 2010, para. 104). The WGEID also issues follow-up reports on the implementation of previous recommendations.

The WGEID issues studies on specific issues (e.g. study on best practices on enforced disappearances in domestic criminal legislation), as well as general comments on the interpretation of specific provisions of the 1992 Declaration or on thematic issues.

In 2009 the WGEID adopted a general comment on "enforced disappearances as crimes against humanity", where extensive reference to the Rome Statute and to international criminal justice is made and affirmed that "when there are claims of practices of enforced disappearances which may amount to crimes against humanity, the Working Group will evaluate these claims in the light of the criteria listed in Art. 7(1) of the Rome Statute, as interpreted by international and hybrid tribunals and, if appropriate, *will refer them to the competent authorities, be they international, regional or domestic*".[26] To date the WGEID has not yet availed itself of this possibility.

The WGEID reports annually to the Human Rights Council.

2) The Special Rapporteur on the Promotion of Truth, Justice, Reparations and Guarantees of non-Reoccurrence

The Special Rapporteur on the Promotion of Truth, Justice, Reparations and Guarantees of non-reoccurrence[27] is mandated, among other things, to "recommend ways and means to improve and strengthen the promotion of truth, justice, reparation and guarantees of non-recurrence"; "make recommendations concerning, *inter alia*, judicial and non-judicial measures when designing and implementing strategies, policies and measures for addressing gross violations of human rights and serious violations of international humanitarian law"; and "conduct country visits".

In his first report in 2012 the Special Rapporteur indicated that "[…] in the context of the meeting of States and other parties interested in the topic of complementarity hosted by Sweden with the support of Denmark and South Africa in Stockholm, he gave a speech about his mandate and participated in discussions about the *contribution that it can make to the practice of complementarity under the Rome Statute of the International Criminal Court*" (UN Doc. A/HRC/21/46 of 9 August 2012, para. 3).

The Special Rapporteur reports annually to the Human Rights Council and to the General Assembly.

[26] http://www.ohchr.org/Documents/Issues/Disappearances/GCas_crime_against_humanity.pdf, para. 17.
[27] For more information: http://www.ohchr.org/EN/Issues/TruthJusticeReparation/Pages/Index.aspx.

3) The Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions

The Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions[28] examines various issues related to the right to life and unlawful killings. The Special Rapporteur conducts country visits and adopts reports containing conclusions and recommendations. He or she also issues follow-up reports on the implementation of previous recommendations, periodic reports, and studies or conceptual analysis on specific issues related to the mandate. Some of these recent studies include one on the question of targeted killings and one on the question of police oversight mechanisms.[29]

The Special Rapporteur also receives urgent appeals, individual communications and submits annual reports to the Human Rights Council and the General Assembly.

4) The Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

The Special Rapporteur on Torture examines different issues related to torture. He conducts country visits and adopts reports containing conclusions and recommendations. The Special Rapporteur also issues follow-up reports on the implementation of previous recommendations, periodic reports, and studies on specific issues and general comments on thematic issues. In past reports, he referred to the importance of the adoption of the Rome Statute and the definition of torture contained therein (UN Doc. A/54/426 of 1 October 1999, paras. 56-59). In several reports, the Special Rapporteur and his predecessors have emphasised the obligation to criminalize torture and other proscribed ill-treatment and to hold perpetrators criminally accountable. The Special Rapporteur has also submitted *amicus curiae* briefs to courts (e.g. the Supreme Court of the United States of America) on these matters.

The Special Rapporteur may send to governments "urgent appeals" or "letters of allegations" requesting information and comments on the allegations and the necessary preventive or investigative measures be taken.

The Special Rapporteur reports annually to the Human Rights Council and to the General Assembly.

5) The Special Rapporteur on Violence against Women, its Causes and Consequences

The Special Rapporteur on Violence against Women[30] examines various issues related to violence against women, its causes and consequences. She conducts country visits and adopts reports containing conclusions and recommendations. She also issues follow-up reports on the implementation of previous recommendations, periodic reports, as well as studies on specific issues and general comments on thematic issues (e.g. the report on violence against women perpetrated and/or condoned by States during times of armed conflict).

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[28] For more information: http://www.ohchr.org/EN/Issues/Executions/Pages/SRExecutionsIndex.aspx.
[29] See respectively doc. A/HRC/14/24/Add.6 of 28 May 2010; and doc. A/HRC/14/24/Add.8 of 28 May 2010.
[30] For more information: http://www.ohchr.org/EN/Issues/Women/SRWomen/Pages/SRWomenIndex.aspx.

The Special Rapporteur may send to governments "urgent appeals" or "letters of allegations" requesting information and comments on the allegations and the necessary preventive or investigative measures be taken.

The Special Rapporteur on Violence against Women reports annually to the Human Rights Council.

6) The Special Rapporteur on the Human Rights of Internally Displaced Persons

The Special Rapporteur on the human rights of internally displaced persons[31] examines various issues related to the phenomenon of internal displacement. He conducts country visits and adopts reports containing conclusions and recommendations. He also issues follow-up reports on the implementation of previous recommendations, periodic reports, as well as studies and general comments on specific issues. The Special Rapporteur also encourages the development of national laws and policies on internal displacement and is presently planning to develop a policy-makers' handbook to assist governments. The Special Rapporteur reports annually to the Human Rights Council and to the General Assembly.

7) Working Group on Arbitrary Detentions (WGAD)

The WGAD (composed of five independent experts) [32] examines different issues related to arbitrary detention. It conducts country visits and adopts reports containing conclusions and recommendations. It also issues follow-up reports on the implementation of previous recommendations, periodic reports, as well as studies on specific issues.

The WGAD may send to governments "urgent appeals" or "letters of allegations" requesting information and comments on the allegations and the necessary preventive or investigative measures be taken.

The WGAD can also receive individual complaints alleging arbitrary deprivation of liberty and make quasi-judicial determinations as to the merits of these complaints. The WGAD issues conclusions and recommendations.

The WGAD reports annually to the Human Rights Council.

8) The Special Rapporteur on Human Rights Defenders

The Special Rapporteur on Human Rights Defenders[33] examines the situation of human rights defenders and recommends effective strategies in order to enhance their protection in line with the 1998 Declaration on Human Rights Defenders. The Special Rapporteur conducts country visits and adopts reports containing conclusions and recommendations on particular topics or

[31] For more information: http://www.ohchr.org/EN/Issues/IDPersons/Pages/IDPersonsIndex.aspx.
[32] For more information: http://www.ohchr.org/EN/Issues/Detention/Pages/WGADIndex.aspx.
[33] For more information: http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/SRHRDefendersIndex.aspx.

situations of special importance regarding the promotion and protection of the rights of human rights defenders. The Special Rapporteur takes up, with the States concerned, individual cases of human rights violations committed against defenders, submitting urgent appeals and letters of allegations to governments. She also issues studies on thematic issues.

In a 2010 report on "human rights violations by non-State actors", the Special Rapporteur indicated that "Human rights defenders helping victims to access justice for violations of human rights law or international humanitarian law, either locally or before regional or international tribunals such as the International Criminal Court, are also regularly subjected to threats, violence and harassment." Among the conclusions of the report, the Special Rapporteur recommended States to "ratify and entrench in the domestic legal system the Statute of the International Criminal Court as well as the Agreement on Privileges and Immunities of the Court." (UN Doc. A/65/23 of 4 August 2010, paras. 6 and 70).

The Special Rapporteur reports annually to the Human Rights Council and to the General Assembly.

9) The Special Rapporteur on the Promotion and Protection of Human Rights while Countering Terrorism

The Special Rapporteur on the Promotion and Protection of Human Rights while Countering Terrorism[34] examines the situation of human rights while countering terrorism and recommends effective strategies in order to enhance their protection in line with international standards. The Special Rapporteur conducts country visits and adopts reports containing conclusions and recommendations on particular topics or situations of special importance regarding the promotion and protection of human rights while countering terrorism. The Special Rapporteur and his predecessors have often emphasized the question of criminal accountability for violations committed in the context of counter-terrorism operations. In his most recent report, the Special Rapporteur presented a set of framework principles for securing the accountability of public officials for gross or systematic human rights violations committed in the course of State-sanctioned counter-terrorism initiatives (UN Doc. A/HRC/23/49/Add.3 of 17 April 2013). In 2010, the Special Rapporteur addressed the question in a joint study on global practices in relation to secret detention in the context of countering terrorism prepared with the Special Rapporteur on Torture, the WGAD and the WGEID (UN Doc. A/HRC/13/42 of 19 February 2010).

The Special Rapporteur reports annually to the Human Rights Council and the General Assembly.

[34] For more information: http://www.ohchr.org/EN/Issues/Terrorism/Pages/SRTerrorismIndex.aspx.

10) Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises (WGBHR)

The WGBHR (composed of five independent experts, holds three sessions per year)[35] examines the subject of human rights and transnational corporations and other business enterprises. It conducts country visits and adopts reports containing conclusions and recommendations on matters of crucial importance relating to the mandate. This mandate is crucial in relation to exploring new dimensions and implications of accountability for non-State actors.

The WGBHR promotes the dissemination and implementation of the 2011 Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework (endorsed by Human Rights Council resolution 17/4 of 16 June 2011). The WGBHR may, upon request, provide advice and recommendations regarding the development of domestic legislation and policies to business and human rights.

The WGBHR reports annually to the Human Rights Council and the General Assembly.

11) Working Group on the Use of Mercenaries as a Means of Violating Human Rights and Impeding the Exercise of the Right of Peoples to Self-Determination (WGMHR)

The WGMHR (composed of five independent experts) holds three sessions per year and examines various issues related to the use of mercenaries as a means of violating human rights.[36] It studies and identifies causes and emerging issues, manifestations and trends regarding mercenaries or mercenary-related activities, as well as the activities of private companies offering military and security services, and their impact on human rights, particularly on the right of peoples to self-determination. This mandate plays a significant role in the exploration of the dimension of accountability for non-State actors.

The WGMHR monitors mercenaries and related activities in all their forms and manifestations in different parts of the world. It examines, as a special category, situations where children are used as mercenaries or involved in mercenary related activities.

The WGMHR conducts country visits and adopts reports containing conclusions and recommendations on matters of crucial importance relating to the mandate.

In this context, it elaborated a draft **Convention on Private Military and Security Companies** which is among the working documents being considered by the Open-ended Intergovernmental Working Group to Consider the Possibility of Elaborating and International Regulatory Framework on the Regulation, Monitoring and Oversight of the Activities of Private

[35] For more information: http://www.ohchr.org/EN/Issues/Business/Pages/WGHRandtransnationalcorporationsandotherbusiness.aspx.
[36] For more information: http://www.ohchr.org/EN/Issues/Mercenaries/WGMercenaries/Pages/WGMercenariesIndex.aspx.

Military and Security Companies (IGWG).[37] The WGMHR makes regular submissions to this Open-ended Working Group and actively participates in its sessions.

When there are sufficiently reliable allegations that human rights violations are being perpetrated by mercenaries, as a result of mercenary related activity or of activities of private military and security companies, the WGMHR may take urgent actions.

The WGMHR deals with individual cases concerning violations committed by mercenaries or by private military or security companies and renders opinions that are included in its annual reports to the Human Rights Council and the General Assembly.

12) Special Procedures related to Economic, Social and Cultural Rights

Certain violations of economic, social and cultural rights may amount to war crimes or crimes against humanity (e.g. forced evictions as a result of attacks on civilian infrastructure, starvation of the population as a means of war).

There are a number of Special Procedures dealing with economic, social and cultural rights. Of particular importance in relation to accountability for crimes under international law are the **Special Rapporteur on Adequate Housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context,**[38] the **Special Rapporteur on the Right to Food,**[39] **t**he **Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health,**[40] **and** the **Special Rapporteur on the Right to Education.**[41]

All these Special Procedures conduct country visits and adopt reports containing conclusions and recommendations, as well as follow-up reports on the implementation of previous recommendations, and studies/general comments on specific issues. They all receive individual complaints and they report annually to the Human Rights Council and to the General Assembly.

Of relevance with regard to accountability and international justice are the Basic Principles and Guidelines on Development Based Evictions and Displacement (UN Doc. A/HRC/4/18 of 5 February 2007). Furthermore, the relevant Special Procedures issue studies on justiciability respectively of the right to food, the right to health and the right to education.

[37] For more information: http://www.ohchr.org/EN/HRBodies/HRC/WGMilitary/Pages/OEIWGMilitaryIndex.aspx.
[38] For more information: http://www.ohchr.org/EN/Issues/Housing/Pages/HousingIndex.aspx.
[39] For more information: http://www.ohchr.org/EN/Issues/Food/Pages/FoodIndex.aspx.
[40] For more information: http://www.ohchr.org/EN/Issues/Health/Pages/SRRightHealthIndex.aspx.
[41] For more information: http://www.ohchr.org/EN/Issues/Education/SREducation/Pages/SREducationIndex.aspx.

Ideas for Advocacy related to Thematic Mandates

- **Advocate for the building of sound expertise** on accountability within Special Procedures.
- Advocate for the inclusion in the relevant resolutions of the Human Rights Council to renew the mandate of each Special Procedure of a specific **reference to the contribution that the mandate can make with regard to accountability and international justice.** Where appropriate, ensure that relevant Special Procedures can provide technical cooperation on issues related to their mandate and accountability.
- Explore the possibility of **thematic studies** by competent Special Procedures on issues such as domestic legislation to implement the Rome Statute and effective cooperation with the ICC; codification of crimes under international law at the domestic level; universal jurisdiction; and the implementation of the Principles against Impunity or the Principles on Reparations. These thematic studies should be adapted to the specificities of each Special Procedure, and should be concerted among Special Procedures and Treaty Bodies to avoid overlapping and undue duplication. Examples of potential thematic studies may be: domestic legislation to implement the Rome Statute with regard to enforced disappearance, or on universal jurisdiction and enforced disappearance; best practices on complementarity under the Rome Statute; imprisonment or other sever deprivation of physical liberty in violation of fundamental rules of international law as a war crime or a crime against humanity; arbitrary, extrajudicial and summary executions and accountability; accountability for torture and other forms of ill-treatment, or universal jurisdiction and torture and other ill-treatment; violence against women and international criminal justice; accountability and forced displacement; the role of human rights defenders as indermediaries or witnesses in the ICC or other international justice procedures and the need to enhance their protection; accountability and transnational corporations; accountability and private military or security companies; accountability and forced evictions as war crimes or crimes against humanity; accountability and starvation of civilian population as war crime or crime against humanity; and impermissible obstacles to accountability, such as immunities, amnesty law and similar measures, and statutes of limitations.
- Ensure that, where appropriate, **international justice and ICC related recommendations are included in country visit reports** of each Special Procedure (and in the relevant follow-up reports). These may include the ratification of or accession to United Nations core human rights treaties, the Rome Statute, the APIC, and the Kampala Amendments; the implementation of adequate domestic legislation and of effective measures of cooperation with the ICC, including, where appropriate, the execution of pending ICC arrest warrants; the establishment of universal jurisdiction over crimes under international law; the codification of enforced disappearance, torture, other forms of ill-treatment, arbitrary executions as separate offences under domestic criminal law; and the implementation of the UN Principles against Impunity and the UN Basic Principles and Guidelines on Remedy and Reparation. The inclusion of the said recommendations can be pursued through the **submission of reports** on the countries to be visited by the Special Procedure and through **meetings** with the relevant Special Procedure concerned.
- Advocate for the inclusion, where appropriate, of **international justice and ICC related recommendations in the annual reports** of each Special Procedure.
- With regard to the WGEID in particular, explore the possibility that it **refers information on enforced disappearance as crimes against humanity to the competent authorities, be they international, regional and domestic.** Encourage in particular, the consideration of possibilities of direct cooperation between the WGEID with the ICC.
- Where appropriate, **submit information to the WGEID concerning the systematic practice of enforced disappearance in specific countries**, calling on it to refer this information to regional tribunals or, where feasible, directly to the ICC.
- With regard to the **Special Rapporteur on Truth, Justice, Reparations and Guarantees of Non-reoccurence** in particular, explore with it *ad hoc* accountability solutions (e.g. hybrid justice mechanisms) in situations where the ICC does not or will not have jurisdiction.

- With regard to the WGAD, develop **"litigation strategies"** when individual cases of arbitrary deprivation of liberty can be brought with regard to obtaining conclusions from the WGAD that would contain accountability and international justice-friendly developments.
- Promote the dissemination, as well as appropriate monitoring on implementation by the WGBHR, of the Guiding Principles on Business and Human Rights and expansion by the WGBHR of the practical barriers and solutions to the investigation and prosecution of acts involving human rights abuses and violations by or in complicity with transnational business enterprises.
- With regard to the WGMHR explore, where appropriate, the submission of communications concerning human rights abuses committed by mercenaries or agents of private military and security companies. In this sense, a strategy aiming at obtaining accountability and international justice-friendly observations and recommendations should be developed.
- Consider participating in the sessions of the IGWG to explore the possibility of elaborating an international regulatory framework on the regulation, monitoring and oversight of the activities of private military and security companies, with a view to having the IGWG establish appropriate accountability and international justice related mechanisms.

D) The United Nations Treaty Bodies

Currently, there are 10 human rights Treaty Bodies. They are committees of independent experts, elected by States parties that monitor the implementation of the core international human rights treaties. For the purpose of this paper, only those Treaty Bodies that are regarded as particularly relevant for the subjects of accountability and impunity for crimes under international law are considered.

The Chairpersons of each of the United Nations Treaty Bodies, as well as of the Sub-Committee on Prevention of Torture, meet annually with the main aim of streamlining and improving human rights reporting procedures, as well as harmonizing the Committee's methods of work.[42]

Ideas for Advocacy

- Advocate for the inclusion among the issues discussed at the annual meeting of **potential cooperation between the Committees and the ICC**.
- Organize a **parallel event** to the annual meeting, where the possibilities for cooperation between Committees and the ICC, as well as the potential role to be played by Committees with regard to accountability and international justice are discussed.

1) The Human Rights Committee (HRC)

The HRC (composed of 18 independent experts, holds three sessions per year)[43] monitors the implementation of the International Covenant on Civil and Political Rights (ICCPR). It receives and examines periodic reports by States and it issues concluding observations. It also may receive individual and inter-state communications with regard to those States that expressly accepted such competence.

[42] For more information: http://www2.ohchr.org/english/bodies/icm-mc/index.htm.
[43] For more information on the HRC see: http://www2.ohchr.org/english/bodies/hrc/index.htm.

The HRC adopts general comments[44] on specific provisions of the ICCPR and on thematic issues. In its general comment No. 31 (2004), the HRC spells out many obligations of States parties related to accountability and, in particular, the obligation to adequately codify in domestic criminal law certain violations. Of special interest for the fight against impunity is para. 18 of the general comment: "where the investigations [….] reveal violations of certain Covenant rights, States Parties must ensure that those responsible are brought to justice. As with failure to investigate, failure to bring to justice perpetrators of such violations could in and of itself give rise to a separate breach of the Covenant. These obligations arise notably in respect of those violations recognized as criminal under either domestic or international law, such as torture and similar cruel, inhuman and degrading treatment (article 7), summary and arbitrary killing (article 6) and enforced disappearance (articles 7 and 9 and, frequently, 6). Indeed, the problem of impunity for these violations, a matter of sustained concern by the Committee, may well be an important contributing element in the recurrence of the violations. When committed as part of a widespread or systematic attack on a civilian population, these violations of the Covenant are crimes against humanity (see Rome Statute of the International Criminal Court, article 7)".

Further, in its general comment No. 29 (2001) deals with states of emergency and derogations from the ICCPR and makes reference to the Rome Statute: "in assessing the scope of legitimate derogation from the Covenant, one criterion can be found in the definition of certain human rights violations as crimes against humanity. If action conducted under the authority of a State constitutes a basis for individual criminal responsibility for a crime against humanity by the persons involved in that action, article 4 of the Covenant cannot be used as justification that a state of emergency exempted the State in question from its responsibility in relation to the same conduct. Therefore, the recent codification of crimes against humanity, for jurisdictional purposes, in the Rome Statute of the International Criminal Court is of relevance in the interpretation of article 4 of the Covenant" (para. 12).

The HRC reports annually to the General Assembly.

2) The Committee against Torture (CAT)

The CAT (composed of 10 independent experts, holds two sessions per year)[45] monitors the implementation of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. It receives and examines periodic reports by States and issues concluding observations. The CAT has already included recommendations concerning the ratification of or the accession to the Rome Statute or on the adoption of adequate domestic

[44] The expression "general comments/recommendations" refers to commentaries adopted by UN Treaty Bodies, where the latter provide their interpretation of their respective human rights treaty. General comments/recommendations may cover the comprehensive interpretation of substantive provisions, or general guidance on the information that should be submitted in State reports relating to specific articles of the treaties. General comments may also deal with cross-cutting issues, such as the rights of minorities or violence against women.
[45] For more information: http://www2.ohchr.org/english/bodies/cat/index.htm.

legislation in its concluding observations on specific countries (e.g. concluding observations on Morocco, UN Doc. CAT/C/MAR/CO/4 of 21 December 2011, para. 31).

The CAT may also receive and consider inter-state and individual communications with regard to those States that have deposited a declaration under Arts. 21 and 22 of the Convention, recognizing the competence of the CAT in this respect.

Moreover, the Convention against Torture obliges States parties to adopt domestic legislation to codify torture as a separate offence under domestic criminal law (Art. 4); requires to States to criminalize torture (Art. 7); and to enable national tribunals to exercise universal jurisdiction over persons alleged to be responsible for acts of torture (Arts. 5 to 9). The CAT has already frequently included recommendations on these subjects in its concluding observations on periodic reports submitted by States parties (e.g. concluding observations on Mexico, UN Doc. CAT/C/MEX/CO/5-6 of 23 November 2012, para. 23; and concluding observations on Russian Federation, UN Doc. CAT/C/RUS/CO/5 of 23 November 2012, para. 7).

The CAT adopts general comments on specific provisions of the Convention against Torture and on thematic issues. So far, the CAT has adopted three general comments, concerning respectively *refoulement* and communications (1996); implementation of Art. 2 (prevention of acts of torture) by States parties (2007); and implementation of Art. 14 (redress for victims of torture) by States parties (2012).

Pursuant to Art. 20 of the Convention against Torture, if the CAT receives reliable information which appears to contain well-founded indications that torture is being systematically practiced in the territory of a State party, the CAT may designate one or more of its members to make a confidential inquiry that, in agreement with the State party concerned, may include a visit to the territory, and to report to the CAT urgently. The CAT transmits its findings to the State party concerned together with comments and suggestions. Proceedings related to this competence of the CAT are confidential. The CAT, after consultations with the State concerned, may include a summary of the results of the proceedings in its annual report.

The CAT reports annually to the General Assembly.

3) The Committee on Enforced Disappearances (CED)

The CED (composed of 10 independent experts, holds two sessions per year)[46] monitors the implementation of the International Convention on the Protection of All Persons from Enforced Disappearance.

The Convention refers to enforced disappearances as crimes against humanity both in its preamble and in Art. 5. It provides extensive obligations in relation to the criminalization of

[46] For more information: http://www.ohchr.org/EN/HRBodies/CED/Pages/CEDIndex.aspx.

enforced disappearance (Arts. 4 to 11). Moreover, Art. 9 of the Convention sets forth that each State party must establish its competence to exercise jurisdiction over the offence of enforced disappearance when the alleged perpetrator is present in any territory under its jurisdiction, unless it extradites him or her to another State or *surrenders him or her to an international criminal tribunal whose jurisdiction it has recognized.*

The CED examines the reports submitted by States parties within two years after the entry into force of the Convention for the State concerned and makes concluding observations and recommendations.

The CED may also receive and consider inter-state and individual communications with regard to those States that expressly accepted such competence.

Pursuant to Art. 33, if the CED receives reliable information indicating that a State party is seriously violating the provisions of the Convention, it may, after consultation with the State concerned, request one or more of its members to undertake a visit and report back to it without delay.

Art. 34 of the Convention establishes that if the CED receives information which appears to contain well-founded indications that e*nforced disappearance is being practiced on a widespread or systematic basis* in the territory under the jurisdiction of a State party, it may, after seeking from the State concerned relevant information, *urgently bring the matter to the attention of the General Assembly of the United Nations, through the Secretary-General of the United Nations.*

The CED may adopt general comments on specific provisions of the Convention and on thematic issues.

The CED reports annually to the General Assembly.

4) The Committee on the Rights of the Child (CRC)

The CRC (composed of 18 independent experts, holds three sessions per year) [47] monitors the implementation of the Convention on the Rights of the Child and of the first two optional Protocols to the Convention on the involvement of children in armed conflicts and on the sale of children, child prostitution and child pornography.

The general principle overlaying the substantive provisions of the Convention is that in all actions undertaken by the State, the best interests of the child must be a primary consideration (Art. 3).

The preamble of the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (OP-AC) makes express reference to the adoption of

[47] For more information: http://www2.ohchr.org/english/bodies/crc/index.htm.

the Rome Statute and to the inclusion therein as a war crime, of conscripting or enlisting children under the age of 15 or using them to participate actively in hostilities in both international and non-international armed conflicts. Furthermore, the OP-AC contains provisions concerning the establishment of universal jurisdiction over the recruitment and use of children under 18 years of age by armed forces and armed groups. Art. 4, para. 3, of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography requires States parties to establish universal jurisdiction over the aforementioned offences when the alleged offender is present in their territory and they do not extradite him or her to another State party.

The CRC receives and examines periodic reports by States and it issues concluding observations. The CRC already included recommendations concerning the ratification of or the accession to the Rome Statute or on the adoption of adequate domestic legislation in its concluding observations on specific countries (e.g. concluding observations on Viet Nam, UN Doc. CRC/C/VNM/CO/3-4 of 15 June 2012, para. 76). The CRC has included recommendations concerning universal jurisdiction over the recruitment and use of children of less than 18 years of age in several of its concluding observations on country reports (e.g. concluding observations on Switzerland, UN Doc. CRC/C/OPAC/CHE/CO/1 of 17 March 2006, para. 8.a).

It adopts general comments on specific provisions of the CRC and its Optional Protocols, and on thematic issues. It further organizes "General Discussion Days" on issues related to children's rights (e.g. in 1992 it held a general discussion day on "children in armed conflict").
In 2012 an Optional Protocol on a Communications Procedure to the CRC was opened for signature. It will enter into force three months after the 10th ratification and it will allow individuals to submit to the CRC complaints with regard to specific violations of their rights under the Convention.

The CRC reports annually to the General Assembly.

5) The Committee on the Elimination of Discrimination against Women (CEDAW)

The CEDAW (composed of 23 independent experts, holds three sessions per year)[48] monitors the implementation of the Convention on the Elimination of All Forms of Discrimination against Women. It receives and examines periodic reports by States and issues concluding observations. The CEDAW has included recommendations concerning the ratification of or the accession to the Rome Statute in its concluding observations on specific countries (e.g. concluding observations on Indonesia, UN Doc. CEDAW/C/IDN/CO/6-7 of 27 July 2012, para. 28.g).

[48] For more information: http://www2.ohchr.org/english/bodies/cedaw/index.htm.

The CEDAW may also receive individual communications with regard to those States that expressly accepted such competence.

Pursuant to Art. 8 of the Optional Protocol to the Convention, if the CEDAW receives reliable information indicating grave or systematic violations by a State party of the rights set forth in the Convention, the CEDAW may designate one or more of its members to conduct an inquiry (which, upon consent on the State concerned may include a visit to the territory of the latter) and report urgently to the CEDAW. The CEDAW transmits these findings to the State concerned together with any comments and recommendations. The inquiry shall be conducted confidentially.

The CEDAW adopts general comments/recommendations on specific provisions of the Convention and on thematic issues.

The CEDAW reports annually to the General Assembly.

6) The Committee on Economic, Social and Cultural Rights (CESCR)

The CESCR (composed of 18 independent experts, holds two sessions per year)[49] monitors the implementation of the International Covenant on Economic, Social and Cultural Rights. It receives and examines periodic reports by States and issues concluding observations. Notably, a number of war crimes and crimes against humanity amount to gross violations of economic, social and cultural rights and, as such, fall under the CESCR mandate.

The CESCR may also receive individual and inter-State communications with regard to those States that ratified or acceded to its Optional Protocol.

Pursuant to Art. 11 of the Optional Protocol to the Covenant, with regard to States parties that have expressly recognized this competence, if the CESCR receives reliable information indicating grave or systematic violations by a State party of the rights set forth in the Covenant, it may designate one or more of its members to conduct an inquiry (which, upon consent on the State concerned may include a visit to the territory of the latter) and report urgently to the CESCR. The CESCR transmits these findings to the State concerned together with any comments and recommendations. The inquiry shall be conducted confidentially.

The CESCR adopts general comments/recommendations on specific provisions of the Covenant and on thematic issues, and holds general discussion days. Of particular interest is general comment No. 7 of 20 May 1997 on forced evictions.

The CESCR reports annually to the General Assembly.

[49] For more information: http://www2.ohchr.org/english/bodies/cescr/index.htm.

7) The Committee on the Elimination of Racial Discrimination (CERD)

The CERD is composed of 18 independent experts and holds two sessions per year.[50] It monitors the implementation of the Convention on the Elimination of All Forms of Racial Discrimination. Under the Convention, the widespread or systematic practice of racial discrimination may amount to crimes against humanity or genocide.

The CERD receives and examines periodic reports by States parties and issues concluding observations. The CERD may also receive individual communications with regard to those States that have made the necessary declaration under Art. 14 of the Convention. Inter-State communications may also be examined pursuant to Arts. 11-13 of the Convention.

The CERD has an "early-warning procedure", aimed at preventing existing situations from escalating into conflicts. Early warning measures can include confidence-building measures to identity and support what strengthens and reinforces racial tolerance, particularly to prevent a resumption of conflict where it has previously occurred.

Moreover, the CERD adopts "urgent measures" to respond to problems requiring immediate attention to prevent or limit the scale or number of serious violations of the Convention. An urgent procedure could be initiated in the presence of "a serious, massive or persistent pattern of racial discrimination".

The CERD adopts general recommendations (the parallel to general comments by other Treaty Bodies) setting out its interpretation of the Convention's provisions or relating to thematic issues. Of particular interest are general recommendations No. 18 of 1994 and No. 31 of 2005 concerning the establishment of an international tribunal to prosecute crimes against humanity and the prevention of racial discrimination in the administration and functioning of the criminal justice system.

The CERD organizes thematic discussions. For instance, in 2005 it held a thematic discussion on the prevention of genocide, which resulted in the adoption of a "Declaration on the Prevention of Genocide" (UN Doc. CERD/C/66/1), where it is stated that the CERD "considers imperative to dispel the climate of impunity that is conducive to war crimes and crimes against humanity by referring all perpetrators of these crimes to the International Criminal Court" (para. 11). On the same occasion, the CERD also adopted a decision (UN Doc. CERD/C/67/1) on follow-up to the Declaration on the Prevention of Genocide, containing a list of indicators of patterns of systematic and massive racial discrimination. These indicators may serve as a tool for the CERD, when examining the situation in State party under one of its procedures, to assess the existence of factors known to be important components of situations leading to conflict and genocide. The existence of a "policy or practice of impunity" is listed among the

[50] For more information: http://www2.ohchr.org/english/bodies/cerd/index.htm.

indicators. If one or more of the indicators are present, the CERD recommends that the State party concerned reports, within a fixed deadline, on what it intends to do to ameliorate the situation.

The CERD reports annually to the General Assembly.

Ideas for Advocacy related to Treaty Bodies

- Advocate for the **building of a soud expertise** on accountability within Treaty Bodies.
- Advocate for the inclusion in each Treaty Body **annual report** of a **specific section** on the measures undertaken by States parties with regard to accountability and international justice, including the ratification of or accession to the Rome Statute, APIC, Kampala Amendments and United Nations core human rights treaties; the adoption of adequate domestic legislation and good practices with regard to universal jurisdiction.
- Advocate for the inclusion by relevant Treaty Bodies in their concluding observations on country periodic reports (as well as in the follow-up reports) of accountability, **international justice and ICC related recommendations**. These may include the ratification of or the accession to the Rome Statute, the APIC and the Kampala Amendments, as well as the ratification of or accession to United Nations core human rights treaties and optional protocols thereto and the recognition by States parties of the competence of Treaty Bodies to receive and examine communications. Further, recommendations must refer to the adoption of adequate domestic legislation and of effective measures to cooperate with the ICC, including, where appropriate, the execution of ICC arrest warrants; and universal jurisdiction over crimes under international law. Where appropriate, recommendations concerning domestic legislation codifying crimes under international law and concerning the implementation the UN Principles on Impunity and the UN Basic Principles and Guidelines on Remedy and Reparation should also be included. The inclusion of the said recommendations can be pursued through the submission of **alternative reports** on specific countries and through **participation and oral interventions** during the sessions.
- Advocate, where appropriate, for the elaboration by relevant Treaty Bodies of **thematic general comments** on issues related to accountability and international justice under the angle of their specific mandate.
- Promote the establishment of a **dialogue between relevant Treaty Bodies and the ICC** on issues of mutual interest.
- Develop litigation strategies before the different Treaty Bodies when **individual communications** can be brought with regard to obtaining views that would contain accountability and international justice-friendly developments (e.g. observations or recommendations related to the national legislation on universal jurisdiction over crimes under international law).
- Where applicable, promote the holding of **days of general and public discussion** on specific provisions of the treaties concerned that are particularly relevant with regard to accountability and impunity.
- In the specific case of **CAT**, where appropriate, **submit information concerning the systematic practice of torture** in a State party to trigger the inquiry procedure pursuant to Art. 20 of the Convention against Torture. Suggest that the CAT recommends the ratification of or accession to the Rome Statute, the APIC, and the Kampala Amendments; the adoption of adequate domestic legislation and of effective measures to cooperate with the ICC, including, where appropriate, the execution of pending ICC arrest warrants, domestic legislation on universal jurisdiction over crimes under international law, and the criminalization of torture and other cruel, inhuman or degrading treatment at the domestic level in line with international standards.
- In the specific case of the **CED**, promoting a **public debate** on the concrete functioning (and the impact it may have on the rules of procedure and the methods of work of the CED) of Arts. 33 and 34 of the Convention, exploring which mechanisms can be triggered (e.g. General

Assembly, Security Council, etc.) to respond to enforced disappearances occurring on a widespread or systematic scale.

- In the specific case of the **CED**, where appropriate, **submit information concerning the systematic practice** of enforced disappearance in a State party to trigger the country visit procedure pursuant to Art. 33 of the Convention and the referral procedure pursuant to Art. 34 of the Convention. **Request meetings during the CED country visits**, and suggest that the report includes accountability, international justice and ICC related recommendations.
- In the specific case of the **CEDAW**, where appropriate, **submit information concerning the systematic** commission of crimes under international law against women in a State party to trigger the **inquiry procedure** pursuant to Art. 8 of the Optional Protocol to the Convention. Suggest that the findings on the State concerned include international justice, accountability and ICC related recommendations.
- In the specific case of the **CESCR**, where appropriate, **submit information concerning the systematic** commission of violations of economic, social and cultural rights amounting to war crimes or crimes against humanity in a State party to trigger the **inquiry procedure** pursuant to Art. 11 of the Optional Protocol to the Convention. Suggest that the findings on the State concerned include international justice, accountability and ICC related recommendations.
- In the specific case of the **CERD**, where appropriate, submit **information concerning the gross or systematic practice of racial discrimination** to trigger either the **early warning procedure** or the **urgent measures**.
- In the specific case of the **CERD**, promote the **dissemination of the Declaration on the Prevention of Genocide**, as well as of the **indicators of patterns of systematic** and widespread racial discrimination.

III. The Necessity for Coordination between relevant Stakeholders, States and CSOs

Promoting and mainstreaming issues related to international justice and the fight against impunity for crimes under international law requires joint efforts and cooperation between all stakeholders, in particular States and civil society organizations. As an example of such successful partnership, the experience of the Coalition for the ICC shows that interaction and cooperation between States and CSOs can bring exceptional results. The same dynamic has been at play for other relevant initiatives before United Nations human rights bodies. They tend to achieve the most significant and effective results when States and CSOs work in cooperation, even where there may not be in agreement on each and every sub-issue.

This is particularly true in respect of the creation of the ICC itself, which resulted from an unprecedented level of cooperation and consultation between States and civil society. Thanks in major part to subsequent dedicated CSO campaigns for the universality of the Rome Statute, supported by a number of like-minded States, the ICC was established in 2002 and counts 122 members today. CSOs also played a substantial role in ensuring the elaboration of other standards addressing accountability and international justice, such as the UN Principles against Impunity and the UN Basic Principles and Guidelines on Remedy and Reparation.

In this framework, joint efforts are needed for the fight against impunity and principles of accountability for international crimes to become key issues in the discussions and activities undertaken by Geneva based mechanisms and officials dealing with violations of international law, international humanitarian law and human rights on a daily basis.

About TRIAL

TRIAL (*Swiss Association against Impunity*) is a Geneva-based NGO established in 2002 and in consultative status with the United Nations Economic and Social Council (ECOSOC). It is apolitical and non-confessional. Among its principal goals is the fight against impunity of perpetrators, accomplices and instigators of genocide, war crimes, crimes against humanity, enforced disappearances and acts of torture. TRIAL is a member of the International Coalition against Enforced Disappearances, as well as of the International Coalition for the International Criminal Court, serving as the secretariat of the Swiss Coalition for the International Criminal Court.

TRIAL supports victims of gross human rights violations and their families by filing complaints before international human rights bodies, with over 125 cases submitted by mid-2013. Currently, TRIAL works on cases of gross human rights violations perpetrated in Algeria, Bosnia and Herzegovina, Burundi, Kenya, Libya, Mexico, Nepal and Tunisia. Moreover, TRIAL also submits reports assessing the respect of human rights in certain countries to United Nations Treaty Bodies and Special Procedures.

TRIAL further files criminal complaints before Swiss courts against individuals suspected of having committed crimes under international law who are present on Swiss territory. TRIAL has been involved before Swiss courts in a number of cases concerning alleged perpetrators of torture and crimes against humanity committed in Afghanistan, Algeria, Sri Lanka, Guatemala, Somalia and Tunisia, and investigates numerous other cases on the ground.

TRIAL has also set up "Trial Watch", an on-line database that provides information on numerous cases and procedures concerning crimes under international law before national or international tribunals. It contains more than 1,000 profiles, each one of them with a brief explanation of the facts, a summary of the legal procedure, and links to documents, including court decisions, NGOs' reports, bibliographies, and press articles.

To learn more, visit www.trial-ch.org

About the International Commission of Jurists

Composed of 60 eminent judges and lawyers from all regions of the world, the International Commission of Jurists (ICJ) promotes and protects human rights through the Rule of Law, by using its unique legal expertise to develop and strengthen national and international justice systems. Established in 1952 and active on five continents, the ICJ aims to ensure the progressive development and effective implementation of international human rights and international humanitarian law; secure the realization of civil, cultural, economic, political and social rights; safeguard the separation of powers; and guarantee the independence of the judiciary and legal profession.

The ICJ works for the progressive development of international human rights law and standards, and to ensure that it is used effectively for the protection of all people, including the most vulnerable, and is implemented through effective national and international procedures. The ICJ works to promote and extend the rule of law as a dynamic concept through which civil, cultural, economic, political and social rights are safeguarded and advanced and to assist judges, lawyers and prosecutors, acting under the highest ethical standards and professional integrity, to be independent, impartial and free to carry out their duties.

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ISBN 978-92-9037-182-X