



# General Assembly

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## Human Rights Council

### Thirty-third session

Agenda item 3

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

**Albania, Andorra,\* Argentina,\* Armenia,\* Australia,\* Austria,\* Belgium, Bosnia and Herzegovina,\* Bulgaria,\* Cyprus,\* Denmark,\* Estonia,\* Finland,\* France, Germany, Honduras,\* Iceland,\* Ireland,\* Italy,\* Latvia, Liechtenstein,\* Luxembourg,\* Malta,\* Mexico, Montenegro,\* Morocco, Netherlands, Panama, Peru,\* Poland,\* Portugal, Slovakia,\* Slovenia, Spain,\* Sweden,\* Switzerland, Togo, Uruguay:\* draft resolution**

### **33/... Human rights and transitional justice**

*The Human Rights Council,*

*Guided by the purposes and principles of the Charter of the United Nations,*

*Reaffirming* the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Geneva Conventions of 12 August 1949 and the Additional Protocols thereto of 8 June 1977, other relevant international human rights law and international humanitarian law instruments and the Vienna Declaration and Programme of Action,

*Reaffirming also* the significance of the Convention on the Prevention and Punishment of the Crime of Genocide and the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity as effective international instruments for the prevention and punishment of genocide, war crimes and crimes against humanity,

*Recalling* the set of principles for the protection and promotion of human rights through action to combat impunity,<sup>1</sup> and the updated version of those principles,<sup>2</sup>

*Recalling also* General Assembly resolution 60/147 of 16 December 2005, in which the Assembly adopted the Basic Principles and Guidelines on the Right to a Remedy and

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\* State not a member of the Human Rights Council.

<sup>1</sup> E/CN.4/Sub.2/1997/20/Rev.1, annex II.

<sup>2</sup> E/CN.4/2005/102/Add.1.



Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law,

*Recalling further* Commission on Human Rights resolutions 2005/70 of 20 April 2005, on human rights and transitional justice, 2005/81 of 21 April 2005, on impunity, and 2005/66 of 20 April 2005, on the right to the truth, Human Rights Council resolutions 9/10 of 24 September 2008, 12/11 of 1 October 2009 and 21/15 of 27 September 2012, on human rights and transitional justice, 9/11 of 18 September 2008, 12/12 of 1 October 2009 and 21/7 of 27 September 2012, on the right to the truth, 10/26 of 27 March 2009 and 15/5 of 29 September 2010, on forensic genetics, and Council decisions 2/105 of 27 November 2006, on the right to the truth, and 4/102 of 23 March 2007, on transitional justice, General Assembly resolution 68/165 of 18 December 2013, on the right to the truth, and Council resolutions 18/7 of 29 September 2011 and 27/3 of 25 September 2014, on the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence,

*Recalling* the 2005 World Summit Outcome,<sup>3</sup> especially paragraphs 138 and 139 thereof, in which all Heads of States and Governments affirmed that each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity, and that this responsibility entails the prevention of such crimes,

*Recalling also* the report of the Secretary-General on the rule of law and transitional justice in conflict and post-conflict societies<sup>4</sup> and his follow-up report on the same topic,<sup>5</sup> including the relevant recommendations contained therein, and his reports issued in 2006,<sup>6</sup> 2012,<sup>7</sup> 2013<sup>8</sup> and 2014<sup>9</sup> outlining a programme of action to enhance the effectiveness of the support provided by the United Nations system for the promotion of the rule of law in conflict and post-conflict situations,

*Noting* the first and second international meetings of Global Action Against Mass Atrocity Crimes, held in San José, from 4 to 6 March 2014, and in Manila from 2 to 4 February 2016,

*Recalling* General Assembly resolution 70/262 of 27 April 2016 on the review of the United Nations peacebuilding architecture, and Security Council resolution 2282 (2016) of 27 April 2016, in which the Assembly and the Council, inter alia, stress that a comprehensive approach to transitional justice, including the promotion of healing and reconciliation, a professional, accountable and effective security sector, including through its reform, and inclusive and effective demobilization, disarmament and reintegration programmes, including the transition from demobilization and disarmament to reintegration, are critical to the consolidation of peace and stability, promoting poverty reduction, the rule of law, access to justice and good governance, further extending legitimate State authority and preventing countries from lapsing or relapsing into conflict,

*Taking note* of the work conducted by the International Law Commission on the topic of “crimes against humanity”,

*Affirming* that impunity for gross violations and abuses of human rights and serious violations of international humanitarian law, including genocide, war crimes, ethnic

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<sup>3</sup> General Assembly resolution 60/1.

<sup>4</sup> S/2004/616.

<sup>5</sup> S/2011/634.

<sup>6</sup> A/61/636-S/2006/980 and Corr.1.

<sup>7</sup> A/66/749.

<sup>8</sup> S/2013/341.

<sup>9</sup> A/68/213/Add.1 and A/69/181.

cleansing and crimes against humanity, encourages their recurrence and is a fundamental obstacle to sustainable peace at the national level, and also to the furtherance of cooperation among peoples and the promotion of international peace and security, and that fighting impunity for such violations and crimes is an important factor for their deterrence and prevention,

*Noting with concern* that attempts to deny or to justify such crimes may risk undermining the fight against impunity, reconciliation and efforts to prevent such crimes,

*Underlining* that past or current gross violations and abuses of human rights and serious violations of international humanitarian law, and including those amounting to genocide, war crimes, ethnic cleansing and crimes against humanity, particularly if assuming an early pattern of conduct, create a risk of further violations when they have not been prevented, punished or adequately addressed,

*Acknowledging* that the fight against impunity and the implementation of transitional justice processes, including the promotion of truth, justice, reparation and guarantees of non-recurrence, can prevent the recurrence of past atrocities or similar violations,

*Recognizing* that justice processes, including public trials, memorialization processes and the preservation of archives and other reliable evidence concerning gross violations and abuses of human rights and serious violations of international humanitarian law, including genocide, war crimes, ethnic cleansing and crimes against humanity, ensure that such crimes are never forgotten and contribute to the prevention of the recurrence of these crimes or similar violations,

*Recognizing also* the importance of assisting States that have undergone past atrocities, upon their request and in cooperation with them, to devise a national comprehensive transitional justice strategy with a view to addressing the needs of victims and their right to an effective remedy, to preventing the recurrence of past atrocities or similar violations, to avoiding relapsing into conflict or other forms of violence, and to ensuring sustainable peace and reconciliation,

*Condemning* impunity for gross violations and abuses of human rights and serious violations of international humanitarian law, including genocide, war crimes, ethnic cleansing and crimes against humanity, and emphasizing the responsibility of States to comply with their obligations under relevant international instruments to end impunity and, to that end, to investigate thoroughly and to prosecute those responsible for such violations and crimes and address the right of victims to an effective remedy in order to avoid the recurrence of similar violations and to seek sustainable peace, justice, truth and reconciliation, and in this regard stressing also the importance of strengthening the capacity of domestic jurisdictions and inter-State cooperation,

*Recognizing* the role of the International Criminal Court in a multilateral system that aims to end impunity, establish the rule of law, promote and encourage respect for human rights and international humanitarian law and achieve sustainable peace, in accordance with international law and the purposes and principles of the Charter,

*Recognizing also* the fundamental role of civil society, through its engagement, advocacy and participation in decision-making processes, in preventing the commission of gross violations and abuses of human rights and serious violations of international humanitarian law, including genocide, war crimes, ethnic cleansing and crimes against humanity, or in addressing their legacy by promoting the right to the truth and the right to justice, reparation and guarantees of non-recurrence,

*Underlining* the fact that, when designing and implementing strategies, policies and measures to address gross violations and abuses of human rights and serious violations of international humanitarian law, including genocide, war crimes, ethnic cleansing and

crimes against humanity, the specific context of each situation must be taken into account with a view to preventing the recurrence of future violations and to ensure social cohesion, nation-building, ownership and inclusiveness at the national level and local levels with a view to promoting reconciliation,

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

*Welcoming* the activities of the United Nations, including through its field presences, in assisting States to design, establish and implement transitional justice mechanisms and to promote the rule of law, and its conceptual and analytical work on transitional justice and human rights, and encouraging greater efforts to ensure that a gender perspective and a victim-centred approach are fully integrated into all of these activities,

*Taking note with appreciation* of the work and reports of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence,

*Taking note* of the overall work developed by the Office of the Special Advisers of the Secretary-General on the Prevention of Genocide and the Responsibility to Protect, including the Framework of Analysis for Atrocity Crimes as one of the tools to assess the risk of genocide, war crimes, ethnic cleansing and crimes against humanity in any situation,

1. *Reiterates* the responsibility of each individual State to protect its population from genocide, war crimes, ethnic cleansing and crimes against humanity, which entails the prevention of such crimes, including their incitement, through appropriate and necessary means;

2. *Condemns* impunity for gross violations and abuses of human rights and serious violations of international humanitarian law, including genocide, war crimes, ethnic cleansing and crimes against humanity, emphasizes the responsibility of States to comply with their obligations under international law to end impunity, and urges States to seek sustainable peace, justice, truth and reconciliation through comprehensive transitional justice strategies, in particular to investigate thoroughly and prosecute those responsible for such violations and crimes, in order to avoid their recurrence and promote reconciliation at the national level;

3. *Acknowledges* the significant progress made by the international community, including within the United Nations system, in developing relevant mechanisms and practices to prevent incitement to and commission of genocide, war crimes, ethnic cleansing and crimes against humanity, the development of comprehensive transitional justice strategies, including the punishment of gross violations and abuses of human rights and serious violations of international humanitarian law, and emphasizes in this context the important role of national, subregional, regional and international efforts to prevent and address the legacy of these crimes and violations and therefore the necessity to strengthen the capacity of domestic efforts, jurisdictions and inter-State cooperation;

4. *Calls upon* States, where relevant, to develop comprehensive transitional justice strategies and to establish judicial and non-judicial mechanisms in order to address past atrocities, the needs of victims and their right to an effective remedy, and to prevent their recurrence;

5. *Encourages* States and international organizations to acknowledge and support the important role of civil society in the prevention of gross violations and abuses of human rights and serious violations of international humanitarian law, including genocide, war crimes, ethnic cleansing and crimes against humanity, and, where relevant, in the promotion and monitoring of comprehensive transitional justice approaches and efforts;

6. *Reaffirms* the important role of women in the prevention and resolution of conflicts and in peacebuilding, and stresses the importance of their equal participation and full involvement in the design, establishment and implementation of comprehensive transitional justice strategies;

7. *Calls upon* States to work to prevent potential situations that could result in gross violations and abuses of human rights and serious violations of international humanitarian law, in particular genocide, war crimes, ethnic cleansing and crimes against humanity, and, in relevant contexts, to timely and efficiently address the legacy of past atrocities in order to prevent their recurrence, including through cooperation with the Office of the Special Advisers of the Secretary-General on the Prevention of Genocide and the Responsibility to Protect and the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence;

8. *Requests* the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence and the Special Adviser of the Secretary-General on the Prevention of Genocide to prepare a joint study on the contribution of transitional justice to the prevention of gross violations and abuses of human rights and serious violations of international humanitarian law, including genocide, war crimes, ethnic cleansing and crimes against humanity, and their recurrence, to be presented to the Human Rights Council at its thirty-seventh session;

9. *Also requests* the Special Rapporteur and the Special Adviser, in preparing the above-mentioned study, to seek the views of States, relevant United Nations mandate holders, relevant United Nations agencies, funds and programmes, and in particular the Office of the United Nations High Commissioner for Human Rights, intergovernmental organizations, national human rights institutions, non-governmental organizations and other relevant stakeholders, including practitioners;

10. *Decides* to remain seized of the matter.

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