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Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

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

Role of the rule of law and accountability, at the national and international levels, in the prevention of human rights violations and abuses

Study of the Office of the United Nations High Commissioner for Human Rights*

Summary

In the present study, the Office of the United Nations High Commissioner for Human Rights examines the role of the rule of law and accountability, at the national and international levels, in the prevention of human rights violations and abuses, and addresses the role of individual accountability for serious human rights violations. The Office of the High Commissioner recommends measures to strengthen the rule of law at the national and international levels and to ensure accountability for such violations and abuses.

* The present study was submitted to the conference services for processing after the deadline so as to include the most recent information.



I. Introduction

1. In its resolution 51/14, the Human Rights Council requested the Office of the United Nations High Commissioner for Human Rights (OHCHR) to prepare a study on the role of the rule of law and accountability on the national and international levels in the prevention of human rights violations and abuses, and to present it to the Council at its fifty-seventh session.

2. In preparation for the study, inputs were sought from relevant stakeholders. Contributions were received from States,¹ regional organizations² and civil society.³ In addition, the practice of the United Nations and other international human rights mechanisms, academic literature and other relevant sources were consulted.

3. Drawing on the contributions, the present study addresses the role of rule of law on the national and international levels in the prevention of human rights violations and abuses,⁴ and addresses the role of individual accountability for serious human rights violations in the prevention of human rights violations and abuses. The study ends with conclusions and recommendations.

II. Rule of law at the national and international levels and its role in the prevention of human rights violations and abuses

A. Introduction

4. At its most abstract level, the rule of law is concerned with constraining the exercise of power within and through a generally applicable normative framework. The Secretary-General has referred to the rule of law as a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards.⁵

5. Within the 2030 Agenda for Sustainable Development, Sustainable Development Goal 16 reflects States' commitment to promoting peaceful and inclusive societies for sustainable development, to providing access to justice for all and to building effective, accountable and inclusive institutions at all levels. It recognizes the critical importance of governance and institution-building as underpinning development and peacebuilding efforts. It highlights the need for the rule of law and encourages catalytic measures to realize peoples' rights within effective justice systems. It underscores the fact that sustainable peace and development are intimately linked to respect for human rights, justice and the rule of law, and it connects peace, justice and inclusion.⁶ Despite its critical importance, as of 2023, progress towards achieving Sustainable Development Goal 16 is not on track.⁷ Some data have pointed to a correlation between declines in the rule of law and the protection of human rights.⁸

¹ Contributions were received from Australia, Chile, Colombia, Ecuador, Guyana, Italy, Lithuania, Mexico, Peru, Philippines, Qatar, Spain, Uruguay, Uzbekistan, Zambia and Zimbabwe.

² A contribution was received from the Council of Europe.

³ Contributions were received from El Hak Foundation for Freedom of Expression and Human Rights and from Stichting Global Human Rights Defence.

⁴ Since the Secretary-General is mandated by the General Assembly to submit an annual report on rule of law activities at the national and international levels (e.g., General Assembly resolution 78/112), the present study does not address rule of law activities of the United Nations.

⁵ S/2004/616, para. 6.

⁶ A/HRC/49/39, para. 14.

⁷ See <https://unstats.un.org/sdgs/report/2023/progress-chart/Progress-Chart-2023.pdf>. See also https://www.unodc.org/documents/data-and-analysis/sdgs/sdg16_progress_report_2024.pdf.

⁸ See <https://worldjusticeproject.org/rule-of-law-index/insights#global-decline>.

6. In 2021, the Secretary-General issued Our Common Agenda, designed to accelerate the implementation of existing agreements, including the Sustainable Development Goals.⁹ He called for a renewed social contract, a whole-of-society approach, including by rebuilding trust through justice and the rule of law, and the implementation of his call to action for human rights. In 2023, he adopted his New Vision for the Rule of Law, in which he highlighted that the rule of law is fundamental to lasting peace and security, and is essential for addressing injustices and inequalities that fuel conflict and for protecting civilians in crisis and post-conflict situations.¹⁰ The advancement of the rule of law is essential for the protection of all human rights, and human rights are central to the rule of law.¹¹ In 2023, the Secretary-General also published A New Agenda for Peace, in which he recommended the development of national prevention strategies to address the different drivers and enablers of violence and conflict in societies and to strengthen national infrastructures for peace. Those strategies could help reinforce State institutions, promote the rule of law and strengthen civil society and social cohesion.¹²

B. Rule of law at the national level

1. Introduction

7. At the national level, the rule of law is a framework of governance that enhances the State's capacity to comply with its obligations under international human rights law by providing safeguards against the exercise of public authority in contravention of human rights obligations, by preventing human rights abuse by third parties, and by ensuring procedural avenues to guarantee that human rights violations and abuses are remedied in accordance with international human rights law. The following are examples of how elements of the rule of law and public institutions can contribute to the prevention of violations and abuses.

2. Elements of the rule of law contributing to prevention

(a) Limits to the arbitrary exercise of power

8. As a principle of governance to constrain abuse of power, essential elements of the rule of law entail ensuring the supremacy of the law,¹³ equality before the law,¹⁴ avoiding unfettered discretion for any branch of government,¹⁵ and adopting the measures necessary to ensure that mandates are exercised in conformity with constitutionally allocated powers.¹⁶ These limits are crucial to avoiding human rights violations and abuses. Constitution-making is important, particularly as part of transitional justice frameworks in contexts dealing with widespread violations and abuses, for its role in conflict prevention, resolution and peacebuilding strategies and non-recurrence of violations and abuses.¹⁷

9. The arbitrary exercise of power may, in and of itself, constitute a human rights violation. As noted by the Human Rights Committee, applying a provision of law to an individual in an arbitrary fashion may constitute a deprivation of the right to equality before the law.¹⁸ The granting of excessive discretion to other branches of government by the legislature can exacerbate risks of human rights violations and abuses. Such risks are

⁹ See <https://www.un.org/en/content/common-agenda-report/>.

¹⁰ See <https://www.ohchr.org/sites/default/files/2023-08/230511-new-vision-for-rule-of-law.pdf>.

¹¹ Ibid.

¹² See <https://www.un.org/sites/un2.un.org/files/our-common-agenda-policy-brief-new-agenda-for-peace-en.pdf>.

¹³ See *Human Rights and Constitution Making* (United Nations publication, 2018).

¹⁴ See also International Covenant on Civil and Political Rights, art. 26.

¹⁵ See e.g. contribution by Peru.

¹⁶ Human Rights Committee, general comment No. 25 (1996), para. 7; and United Nations Development Programme (UNDP), *Protecting Human Rights in Constitutions* (2023), p. 13. The importance of the supremacy of the Constitution was highlighted in the contribution by Guyana.

¹⁷ "Guidance note of the Secretary-General on United Nations constitutional assistance" (September 2020); and A/HRC/37/65, para. 90.

¹⁸ *Borsov v. Estonia* (CCPR/C/81/D/1136/2002), para. 7.2.

particularly acute in the context of national security legislation and emergency powers.¹⁹ At the same time, human rights law constrains the arbitrary exercise of power, in particular through the principles of legality in criminal law and the requirement that permissible restrictions to human rights be provided by law, necessary and proportionate to achieving legitimate ends.²⁰

10. Human rights treaties impose an obligation on States parties to give effect to the provisions of the treaties in their domestic legal systems,²¹ and many modern constitutions recognize human rights explicitly, albeit to differing degrees.²² The codification of human rights in hierarchically superior norms under domestic law may not only constitute an important political symbol of the values prioritized by the State, but also provides an additional domestic guarantee against arbitrary exercise of power and undue rights restrictions.²³

(b) Accountability for the exercise of public power

11. The maintenance of procedures and mechanisms to ensure accountability for misconduct is a central rule of law requirement,²⁴ which can contribute to the promotion of human rights compliance and the prevention of impunity. Accountability is guaranteed in part through rules regulating the conduct of public officials, including rules regulating conflicts of interest. In this respect, a survey conducted among several States indicated a lack of implementation of their conflict-of-interest rules.²⁵ Accountability is also guaranteed through the establishment of internal procedures and oversight mechanisms to address misconduct, as well as independent external oversight, including, where applicable, through criminal investigation, prosecution and punishment of offenders.²⁶

12. Accountability remains important even where the provision of public services is transferred to the private sector.²⁷ An example is the privatization of certain goods and services relating to the enjoyment of economic, social and cultural rights. The Committee on Economic, Social and Cultural Rights has recommended that measures should be adopted to ensure the right of individuals to participate in assessing the adequacy of the provision of such goods and services.²⁸

(c) Transparency of public institutions

13. A central component of the rule of law entails the publicity and accessibility of information, such as laws, regulations and policies, and judicial and key administrative decisions.²⁹ Openness and transparency of government, including through a right of access to information that is generally applicable, and the adoption of measures to ensure the proactive publication of information of general interest are essential, including for individuals to be able to exercise their rights effectively.³⁰ In this respect, concerns have been raised that States have adopted unduly broad interpretations of national security and other

¹⁹ Inter-Parliamentary Union and OHCHR, *Human Rights: Handbook for Parliamentarians No. 26* (2016), p. 94; and [A/HRC/37/52](#).

²⁰ See e.g. International Covenant on Civil and Political Rights, arts. 15, 18, 19, 21 and 22. See also Human Rights Committee, general comment No. 34 (2011), para. 25.

²¹ See e.g. International Covenant on Civil and Political Rights, art. 2.

²² *Human Rights and Constitution Making*, p. 10.

²³ See e.g. [A/HRC/56/30](#), para. 11.

²⁴ European Commission for Democracy through Law, *Rule of Law Checklist* (2016), paras. 114–116.

²⁵ Organisation for Economic Co-operation and Development (OECD), *OECD Survey on Drivers of Trust in Public Institutions – 2024 Results: Building Trust in a Complex Policy Environment* (Paris, 2024), p. 102.

²⁶ See para. 24 below.

²⁷ See e.g. Committee on Economic, Social and Cultural Rights, general comment No. 24 (2017), paras. 21 and 22; and [A/73/396](#).

²⁸ General comment No. 24 (2017), para. 22.

²⁹ European Commission for Democracy through Law, *Rule of Law Checklist*, pp. 25 and 26. See also contribution by Zimbabwe.

³⁰ [A/HRC/49/38](#); and OHCHR, “Guidelines for States on the effective implementation of the right to participate in public affairs”, para. 23.

State interests to restrict access to information, such as, for example, information relating to arms transfers, preventing public scrutiny and affecting parliamentary oversight of the executive branch.³¹

14. The effective protection of whistle-blowers and journalistic sources is an important safeguard to ensure the public's right to receive information in the general interest where the State has not provided or resists provision of such information,³² and to promote accountability for misconduct. Moreover, transparency in lobbying can contribute to strengthening confidence in political systems and to a transparent framework of public participation in decision-making.³³

(d) Participation in decision-making

15. Meaningful participation in decision-making on issues relating to public affairs is crucial to a people-centred approach to the rule of law, including to foster or rebuild trust in institutions.³⁴ It is a human right in itself and is essential for the enjoyment of other rights, including for reducing inequalities and social conflict. It serves to empower individuals and groups and is one of the core elements of human rights-based approaches aimed at eliminating marginalization and discrimination.³⁵ In transitional justice frameworks, the participation of victims and civil society can contribute to community ownership and inclusion.³⁶

16. Public participation in decision-making through elections contributes to the accountability of elected officials to the electorate³⁷ and highlights an important link between the rule of law and democracy.³⁸ It also highlights the importance of the rule of law in the electoral process, including by ensuring the integrity of electoral institutions and the enjoyment of other civil and political rights in electoral contexts.³⁹

17. An open and enabling civic space and a free and independent media are essential for meaningful participation in decision-making.⁴⁰ However, reports indicate that on a global scale, civic space is increasingly curtailed,⁴¹ that the number of human rights defenders killed remains high and that 2023 saw a sharp increase in the number of journalists and media workers killed in situations of armed conflict.⁴²

18. In several States, individuals reported that legislatures did not fairly balance the interests of different interest groups,⁴³ which highlights the importance of ensuring diversity

³¹ See e.g. [A/HRC/56/42](#); and [A/HRC/53/25](#), paras. 23 and 24.

³² [A/70/361](#), para. 59.

³³ Council of Europe Committee of Ministers, recommendation CM/Rec(2017)2, preamble. See also Prevention Project, "State capture as enabling condition for human rights violations" (June 2024), available at <https://app.box.com/s/5bkw68ckzode4bg6l6dosml2kcy7qlsm>.

³⁴ New Vision of the Secretary-General for the Rule of Law, p. 6. See also OECD, *OECD Survey on Drivers of Trust in Public Institutions*; and contribution by Colombia.

³⁵ OHCHR, "Guidelines for States on the effective implementation of the right to participate in public affairs", para. 1.

³⁶ See https://www.ohchr.org/sites/default/files/documents/issues/transitionaljustice/sg-guidance-note/2023_07_guidance_note_transitional_justice_en.pdf, pp. 8 and 9.

³⁷ International Covenant on Civil and Political Rights, art. 25 (b); and Human Rights Committee, general comment No. 25 (1996), para. 7. See also OHCHR, *Human Rights and Elections: A Handbook on International Human Rights Standards on Elections* (2021).

³⁸ General Assembly resolution 67/1; and Guidance Note of the Secretary-General on Democracy, p. 2.

³⁹ See e.g. Prevention Project, "Making constitutional promises credible: the preventive potential of guarantor institutions", available at <https://app.box.com/s/jb16agqtjo56f0gtdn968coumwpgyts1>; and Human Rights Committee, general comment No. 25 (1996), para. 8.

⁴⁰ "United Nations guidance note: protection and promotion of civic space" (September 2020), p. 3; and Human Rights Committee, general comment No. 34 (2011), para. 2. See also contribution by Zimbabwe.

⁴¹ See https://monitor.civicus.org/globalfindings_2023/; and <https://defendcivicspace.com/>.

⁴² See <https://unstats.un.org/sdgs/report/2024/The-Sustainable-Development-Goals-Report-2024.pdf>, p. 41; and <https://www.undp.org/sites/g/files/zskgke326/files/2023-09/undp-unodc-unhchr-global-progress-report-on-sdg-16-indicators.pdf>.

⁴³ OECD, *OECD Survey on Drivers of Trust in Public Institutions*, pp. 104 and 105.

of representation among elected representatives.⁴⁴ In this respect, recent figures show a gradual improvement in the number of women in parliamentary positions,⁴⁵ but a low number of young parliamentarians.⁴⁶

(e) Access to justice

19. Access to justice is a central element in the rule of law, as well as a human right.⁴⁷ The adoption of domestic legal aid arrangements,⁴⁸ measures to ensure the independence of the bar,⁴⁹ and ensuring the justiciability of human rights claims before domestic dispute settlement bodies, including those concerning economic, social and cultural rights,⁵⁰ as well as ensuring the autonomy of prosecution services can all strengthen effective access to justice.⁵¹ Nonetheless, a survey of 104 countries suggests that there is a significant lack of access to justice mechanisms for those who need them, and individuals suffer from a lack of information on how to solve disputes. Even for those who do have access to such procedures, they are often lengthy, costly and are perceived as unfair and unsuccessful in resolving disputes.⁵²

20. This so-called justice gap of unmet justice needs accentuates the importance of adopting a people-centred approach to justice.⁵³ As the Secretary-General has noted, justice institutions must be accessible to every person, user-friendly, non-discriminatory, fair and focused on solutions and remedies that address people's needs and deliver stronger outcomes.⁵⁴

21. Access to justice in countries transitioning from conflict is an important aspect of responding to, but also preventing, human rights violations. Transitional justice reflects the full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale abuses in order to ensure accountability, serve justice and achieve reconciliation.⁵⁵ As the Secretary-General has noted, transitional justice processes should be comprehensive and integrate a series of interrelated elements, including consultations, truth-seeking, criminal justice, reparation and guarantees of non-recurrence.⁵⁶ Such processes contribute to the rule of law in several ways, including the fulfilment of rights and compliance with obligations arising as a result of human rights violations and abuses,⁵⁷ in particular, variegated forms of redress alongside criminal justice responses,⁵⁸ and they empower victims, enabling them to exercise other rights.⁵⁹ Truth-seeking processes can form the basis for rule

⁴⁴ Article 25 of the International Covenant on Civil and Political Rights enshrines the right and opportunity for all citizens to have access, on general terms of equality, to public service in their country.

⁴⁵ See <https://unstats.un.org/sdgs/report/2023/The-Sustainable-Development-Goals-Report-2023.pdf>, p. 22; and <https://unstats.un.org/sdgs/report/2024/The-Sustainable-Development-Goals-Report-2024.pdf>, p. 19.

⁴⁶ See <https://unstats.un.org/sdgs/report/2023/The-Sustainable-Development-Goals-Report-2023.pdf>, p. 45.

⁴⁷ International Covenant on Civil and Political Rights, art. 14; and European Commission for Democracy through Law, "Report on the rule of law" (2011), paras. 53–58.

⁴⁸ See A/HRC/23/43, A/HRC/23/43/Corr.1 and contributions by Zambia and Zimbabwe.

⁴⁹ See A/73/365.

⁵⁰ See <https://www.ohchr.org/sites/default/files/Documents/Publications/FactSheet16rev.1en.pdf>; and Committee on Economic, Social and Cultural Rights, general comment No. 3 (1990), para. 5.

⁵¹ See Guidelines on the Role of Prosecutors; A/HRC/20/19; and <https://rm.coe.int/168074738b>.

⁵² World Justice Project, *Dissecting the Justice Gap in 104 Countries: WJP Justice Data Graphical Report I* (2023), pp. 19, 22, 26, 28, 30 and 32.

⁵³ A/78/171, paras. 8–19.

⁵⁴ New Vision of the Secretary-General for the Rule of Law, p. 5. See also contribution by the Council of Europe.

⁵⁵ S/2004/616; and https://www.ohchr.org/sites/default/files/documents/issues/transitionaljustice/sg-guidance-note/2023_07_guidance_note_transitional_justice_en.pdf, p. 2.

⁵⁶ See https://www.ohchr.org/sites/default/files/documents/issues/transitionaljustice/sg-guidance-note/2023_07_guidance_note_transitional_justice_en.pdf, pp. 13 ff.

⁵⁷ A/HRC/54/24.

⁵⁸ A/HRC/37/65, para. 12. See also A/HRC/27/56.

⁵⁹ A/67/368, para. 78.

of law reforms, including in the security sector,⁶⁰ and through public accounting of the violations and abuses committed, and the structures used in committing them, truth-seeking can also provide the basis for effective prevention policies.⁶¹ Importantly, as past conflict is a reliable predictor of risks of future conflict,⁶² measures to prevent the recurrence of such violations and abuses are inherently preventive.⁶³

3. The preventive role of public institutions

22. Well-functioning public institutions are an important precondition for the rule of law and contribute to the prevention of human rights violations and abuses. For example, the legislature plays a crucial role in the promotion and protection of human rights, including civil, political, economic, social and cultural rights, through its shaping of the legislative framework and its oversight of the conduct and policies of the executive branch.⁶⁴ An important part of its legislative function is also carried out through ratification of treaties or ensuring the conformity of law with international human rights obligations.⁶⁵ Other relevant functions of the legislature include budgetary approval, oversight functions, including through the establishment of parliamentary committees, and parliamentary hearings.⁶⁶ It is therefore of concern that data from several States suggest that only a minority of individuals believe that legislatures in those States can effectively hold the executive government accountable.⁶⁷ It is also of concern that a lack of access to information may prevent a parliament from effective oversight of the executive.⁶⁸

23. Similarly, the judiciary is central to the rule of law and equality in the administration of justice, and for effective human rights protection.⁶⁹ It reviews the conduct of the executive and the compatibility of laws with the Constitution and grants effective remedies following violations, including in the form of reparations and guarantees of non-repetition.⁷⁰ This accentuates the importance of the legal requirement to ensure the independence, impartiality and integrity of the judiciary in law and in practice.⁷¹ Sidelining the authority and independence of the courts weakens the separation of powers and promotes the concentration of overbroad power in the executive.⁷²

24. Furthermore, while the executive branch has a key role to play in the rule of law and prevention of violations and abuses, it is essential to avoid overreach or abuse of its power for this to be effective. The security sector, including law enforcement agencies,⁷³ as well as the armed forces of the State, have important roles to play in protecting individuals from harm, including in situations of armed conflict and violence, and facilitating the right to freedom of peaceful assembly; however, it is equally important to ensure the sector complies with international law. Significantly, effective security sector reform can help to reduce risks of violations and abuses and build resilience against them.⁷⁴ In this respect, the executive branch should establish the conditions necessary for professional law enforcement, including

⁶⁰ Ibid., para. 76.

⁶¹ A/HRC/37/65, para. 14.

⁶² Ibid., paras. 10 and 11.

⁶³ Ibid., para. 86.

⁶⁴ A/HRC/38/25, para. 56. See also General Assembly resolution 67/1, para. 34.

⁶⁵ A/HRC/38/25, para. 20. See also contribution by Australia.

⁶⁶ See contribution by Australia. See also A/HRC/38/25; and https://www.ohchr.org/sites/default/files/documents/publications/policy-methodological/HumanRights_Toolkit_EN_web.pdf, pp. 22–25.

⁶⁷ OECD, *OECD Survey on Drivers of Trust in Public Institutions*, p. 103.

⁶⁸ See A/HRC/56/42.

⁶⁹ Human Rights Committee, general comment No. 32 (2007), para. 2; and General Assembly resolution 67/1, para. 13.

⁷⁰ See contribution by the Philippines.

⁷¹ International Covenant on Civil and Political Rights, art. 14; Human Rights Committee, general comment No. 32 (2007); and Basic Principles on the Independence of the Judiciary, para. 1. See also contribution by Ecuador.

⁷² See A/HRC/53/31, paras. 15–19; and A/HRC/37/65, para. 91.

⁷³ Prevention Project, “The role of police in preventing mass human rights violations” (March 2024), available at <https://app.box.com/s/cwen05tcm25e5hvliekfb7opmcp10>.

⁷⁴ A/HRC/37/65, para. 41. See also contribution by Italy.

by incorporating effective lines of command, control and responsibility, as well as appropriate recruitment, selection and promotion rules and policies, and the implementation of regular training, testing and performance management systems.⁷⁵ Ensuring accountability entails the adoption of recording, reporting, monitoring and review procedures, as well as channels for processing complaints, and ensuring the independent investigation of possible violations.⁷⁶

25. Administrative oversight institutions also have a role to play in prevention, where they are sufficiently independent and resourced.⁷⁷ This includes institutions directly mandated to conduct human rights prevention and protection, such as national human rights institutions that comply with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles),⁷⁸ as well as national preventive mechanisms.⁷⁹ Other institutions, too, form part of the institutional architecture contributing to preventing human rights violations, such as ombudspersons mandated to oversee the executive⁸⁰ and independent audit institutions that contribute to the promotion of integrity and accountability for financial spending and prevent corruption.⁸¹

26. Strengthening public rule of law institutions plays an important role in preventing human rights violations and abuses, including through its contribution to combating corruption and the capture of public institutions.⁸² State capture frustrates the capacity of the State to respect and protect human rights and erodes trust in public institutions.⁸³ Capture of the judiciary by external actors severely erodes the rule of law and can result in impunity for those same actors and facilitate human rights violations. For example, judicial capture has contributed to the arbitrary deprivation of liberty of political opposition members, giving the detention the guise of legitimacy,⁸⁴ and to the use of criminal law to persecute those with dissident views. Regulatory capture by commercial interest groups of legislative bodies can block necessary legislative action, including action necessary to protect the human rights of those affected by those same interests.⁸⁵

⁷⁵ OHCHR and United Nations Office on Drugs and Crime (UNODC), *Resource Book on the Use of Force and Firearms in Law Enforcement* (2017). With respect to the armed forces, the importance of military discipline and emphasis on international humanitarian law compliance by unit leaders has been particularly emphasized to promote international humanitarian law compliance. See Daniel Muñoz-Rojas and Jean-Jacques Frésard, “The roots of behaviour in war: understanding and preventing IHL violations” (International Committee of the Red Cross (ICRC), 2004); and Andrew Bell, “Can IHL training influence military conduct in war?” (ICRC, 7 May 2024).

⁷⁶ OHCHR and UNODC, *Resource Book on the Use of Force*, pp. 152–179. See also A/HRC/37/65, para. 41. Under international humanitarian law, States must adopt effective systems to repress war crimes and suppress other violations, see Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, art. 49; Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, art. 50; Geneva Convention relative to the Treatment of Prisoners of War, art. 129; Geneva Convention relative to the Protection of Civilian Persons in Time of War, art. 146; and Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), arts. 85 (1) and 86 (1). See also Geneva Academy of International Humanitarian Law and Human Rights and ICRC, *Guidelines on Investigating Violations of International Humanitarian Law: Law, Policy, and Good Practice* (2019).

⁷⁷ A/HRC/53/39/Add.1, para. 94.

⁷⁸ See contributions by Spain, Uruguay, Uzbekistan and Zimbabwe.

⁷⁹ Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 3 and part IV.

⁸⁰ See contribution by Lithuania.

⁸¹ See Transparency International and International Organization of Supreme Audit Institutions (INTOSAI) Development Initiative, “Safeguarding the independence of supreme audit institutions: a resource kit for civil society organisations” (2022).

⁸² General Assembly resolution 67/1, para. 25. See also contribution by Mexico.

⁸³ “The UN common position to address global corruption” (August 2020), p. 3; Prevention Project, “State capture as enabling condition for human rights violations”, p. viii. For example, A/HRC/53/49, para. 51.

⁸⁴ Prevention Project, “State capture as enabling condition for human rights violations”, pp. 15 and 16.

⁸⁵ See A/HRC/53/49, para. 51.

C. Rule of law at the international level

1. International rule of law

27. The rule of law is applicable also at the international level. As the General Assembly has affirmed, the rule of law applies to all States equally, and to international organizations, including the United Nations and its principal organs.⁸⁶ That principle is also applicable among nations.⁸⁷ As highlighted in the preamble of the Charter of the United Nations, with the adoption of the Charter, the drafters were determined to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law could be maintained.⁸⁸ The General Assembly has highlighted the paramount importance of the Charter in the “promotion of the rule of law among nations”.⁸⁹ As the Secretary-General has noted, at the international level, the rule of law gives predictability and legitimacy to international relations. Member States’ compliance with their obligations under international law is essential for the maintenance of international peace and security, for international cooperation, and ultimately to protect individuals.⁹⁰

2. Codification, interpretation and progressive development of international law

28. The codification and progressive development of international law contributes to the predictability of rights and obligations and is carried out through treaty-making, the formation and development of customary international law, and the identification of general principles of law.⁹¹ The predictability of rights and obligations under international law is also ensured through interpretation by competent bodies.

29. States continue to contribute to the codification and progressive development of international law through treaty processes. An important example is the ongoing discussions on a convention on crimes against humanity after the conclusion of the International Law Commission’s work on the topic.⁹² On 26 May 2023, the Ljubljana-The Hague Convention on International Cooperation in the Investigation and Prosecution of the Crime of Genocide, Crimes against Humanity, War Crimes and Other International Crimes was adopted, with more than 30 States signing the Convention at a conference held to that end in February 2024.

30. The interpretation of international human rights standards by international courts, tribunals and other dispute settlement bodies, as well as expert bodies such as the International Law Commission, contributes to the predictability of rights and obligations under international law.⁹³ The role of human rights bodies, including the United Nations treaty bodies, through their decisions on individual communications and their general comments,⁹⁴ and of regional human rights courts and tribunals, through individual cases and advisory opinions, has also contributed to the clarification of human rights standards. The need for interpretative clarity is evidenced, for example, by requests for advisory opinions on matters relating to international human rights law. Thus, several of the requests for advisory opinions from the International Court of Justice either explicitly or implicitly relate to international human rights law. For example, on 19 July 2024, the Court delivered an advisory opinion in which it addressed matters of interpretation and application of international human rights law and international humanitarian law, and the legal consequences arising from violations thereof.⁹⁵ Proceedings before the Court are continuing in the context of another advisory opinion with respect to obligations of States in respect of

⁸⁶ General Assembly resolution 67/1, para. 2.

⁸⁷ See e.g. [S/PV.9241](#). See also Robert McCorquodale, “Defining the international rule of law: defying gravity?”, *The International and Comparative Law Quarterly*, vol. 65, No. 2 (2016).

⁸⁸ See also Charter of the United Nations, Arts. 1 (1) and 2 (3).

⁸⁹ General Assembly resolution 2625 (XXV), annex, preamble.

⁹⁰ New Vision of the Secretary-General for the Rule of Law, p. 6.

⁹¹ Statute of the International Court of Justice, Art. 38; and Vienna Convention on the Law of Treaties, arts. 31–33.

⁹² See General Assembly resolution 77/249.

⁹³ On subsidiary means, see e.g. [A/CN.4/760](#).

⁹⁴ *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, Merits, Judgment, *I.C.J. Reports 2010*, p. 639, para. 66.

⁹⁵ See <https://www.icj-cij.org/sites/default/files/case-related/186/186-20240719-adv-01-00-en.pdf>.

climate change.⁹⁶ Requests for advisory opinions have also been a long-standing practice in the Inter-American human rights system,⁹⁷ and with the entry into force in 2018 of Protocol 16 to the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), the European Court of Human Rights has delivered seven advisory opinions.⁹⁸ International judicial bodies have often considered emerging issues affecting the enjoyment of human rights, including the applicability of international human rights law to various aspects of climate change.⁹⁹

3. Peaceful settlement of disputes before independent legal bodies

31. The peaceful settlement of international disputes, including through independent legal bodies,¹⁰⁰ is an important component of the rule of law¹⁰¹ that contributes to prevention. Indeed, the settlement of disputes through other means, such as violence or other forms of self-help, can, in and of itself, constitute or contribute to human rights violations and abuses.

32. In recent years, States have increasingly resorted to dispute settlement on human rights issues. Thus, the International Court of Justice has increasingly been called upon to address contentious cases dealing to varying degrees with human rights. As at 1 June 2023, only 74 States had accepted the compulsory jurisdiction of the Court.¹⁰² States have therefore often resorted to compromissory clauses to establish jurisdiction in such cases.¹⁰³ In important recent case law, the International Court of Justice has held that any State party to the Convention on the Prevention and Punishment of the Crime of Genocide may invoke the responsibility of another State party with a view to ascertaining alleged failure to comply with obligations owed *erga omnes partes*, and to bring that failure to an end.¹⁰⁴ This development could facilitate the peaceful enforcement of international law obligations, the compliance with which is of interest to the international community as a whole.¹⁰⁵ In addition, for the first time since the entry into force of the underlying Convention, three inter-State claims were initiated before the Committee on the Elimination of Racial Discrimination in 2018.¹⁰⁶ More than half of all the inter-State applications that have been lodged with the European Court of Human Rights have been filed since 2014.¹⁰⁷

⁹⁶ See <https://www.icj-cij.org/sites/default/files/case-related/187/187-20230412-app-01-00-en.pdf>.

⁹⁷ For an overview of advisory opinions rendered, see https://www.corteidh.or.cr/opiniones_consultivas.cfm?lang=en.

⁹⁸ See <https://prd-echr.coe.int/web/echr/advisory-opinions>.

⁹⁹ See European Court of Human Rights, *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, Application No. 53600/20, Judgment, 9 April 2024; and Human Rights Committee, *Billy et al. v. Australia* (CCPR/C/135/D/3624/2019). Requests for advisory opinions have been filed before the Inter-American Court of Human Rights and the International Tribunal for the Law of the Sea; see https://www.corteidh.or.cr/docs/opiniones/soc_1_2023_en.pdf; and <https://www.itlos.org/en/main/cases/list-of-cases/request-for-an-advisory-opinion-submitted-by-the-commission-of-small-island-states-on-climate-change-and-international-law-request-for-advisory-opinion-submitted-to-the-tribunal/>.

¹⁰⁰ General Assembly resolution 67/1, para. 4.

¹⁰¹ New Vision of the Secretary-General for the Rule of Law, p. 6.

¹⁰² See <https://www.icj-cij.org/declarations>.

¹⁰³ See pending cases at <https://icj-cij.org/pending-cases>.

¹⁰⁴ See *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Provisional Measures, Order of 23 January 2020, I.C.J. Reports 2020, p. 3, paras. 41 and 42; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Preliminary Objections, Judgment, I.C.J. Reports 2022, p. 477, paras. 114 and 115; and *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, available at <https://www.icj-cij.org/sites/default/files/case-related/192/192-20240126-ord-01-00-en.pdf>, paras. 33 and 34.

¹⁰⁵ General Assembly resolution 56/83, annex, art. 48.

¹⁰⁶ *Qatar v. Saudi Arabia*, *Qatar v. United Arab Emirates* and *State of Palestine v. Israel*, available at <https://www.ohchr.org/en/treaty-bodies/cerd/inter-state-communications>.

¹⁰⁷ See <https://prd-echr.coe.int/web/echr/inter-state-applications>.

4. Access to international justice for individuals

33. Access to justice is an important element in the rule of law, also at the international level, and can contribute to prevention of human rights violations, including by establishing State responsibility for violations and ordering remedies such as guarantees of non-repetition. Such access is guaranteed through standing to bring claims of alleged human rights violations before international bodies, such as United Nations human rights treaty bodies, regional human rights courts and commissions and other international courts and tribunals, including the Economic Community of West African States (ECOWAS) Community Court of Justice¹⁰⁸ and the Court of Justice of the European Union. Jointly, they have considered and delivered rulings in thousands of cases.¹⁰⁹ However, the implementation of rulings by such bodies depends on a variety of factors, including the willingness of the State in question to grant effective remedy, the type of body examining the case and the nature of the remedies granted.¹¹⁰

34. A concern in recent years has been instances of backlash and pushback against particular international courts and tribunals, including in human rights monitoring bodies. Most notably, after the Southern African Development Community (SADC) Tribunal rulings on human rights claims brought by individuals, SADC member States decided to suspend the activities of the Tribunal.¹¹¹ Examples from other courts and tribunals have included withdrawals from the jurisdiction of the Inter-American Court of Human Rights,¹¹² threats to withdraw from the European Court of Human Rights¹¹³ and unsuccessful attempts to narrow the jurisdiction of the ECOWAS Community Court of Justice.¹¹⁴ The latter examples, while concerning, also highlight the resilience of these mechanisms and a prevailing political commitment by States to maintain them. Nonetheless, such actions represent a threat to the international rule of law, the prospects for individuals to obtain remedies for violations and the prevention of human rights violations.

III. Individual accountability for serious human rights violations, at the national and international level, and its role in the prevention of human rights violations and abuses

A. Introduction

35. Ensuring individual accountability for certain human rights violations and abuses, including those amounting to international crimes, is an obligation under international law. It is also key to the prevention of human rights violations and abuses and is crucial to upholding the rule of law. The Human Rights Council has noted that impunity facilitates the

¹⁰⁸ See Supplementary Protocol A/SP.1/01/05, adopted in 2005.

¹⁰⁹ The European Court of Human Rights has delivered more than 10,000 judgments; see <https://www.coe.int/en/web/tbilisi/europecourtsofhumanrights>.

¹¹⁰ See Kate Fox Principi, “Implementation of decisions under UN treaty body complaint procedures – how do States comply? A categorized study based on 268 cases of ‘satisfactory’ implementation under the follow-up procedure, mainly of the UN Human Rights Committee”, *Human Rights Law Journal*, vol. 37, No. 1-6 (2017); Kate Fox Principi, “Internal mechanisms to implement UN human rights decisions, notably of the UN Human Rights Committee: how can these mechanisms assist States to fulfil their good faith obligations?”, *Human Rights Law Journal*, vol. 37, No. 7-12 (2017); Council of Europe Committee of Ministers, *Supervision of the Execution of Judgments and Decisions of the European Court of Human Rights 2023: 17th Annual Report of the Committee of Ministers* (2024); and https://www.corteidh.or.cr/casos_en_supervision_por_pais.cfm?lang=en.

¹¹¹ See <https://ijrcenter.org/regional-communities/southern-african-development-community-tribunal/>.

¹¹² See Ximena Soley and Silvia Steininger, “Parting ways or lashing back? Withdrawals, backlash and the Inter-American Court of Human Rights”, *International Journal of Law in Context*, vol. 14, No. 2 (2018).

¹¹³ Lucy Trevelyan, “Human rights: UK ministers continue to discuss drastic step of leaving ECHR”, International Bar Association, 11 October 2023.

¹¹⁴ Karen J. Alter, James T. Gathii and Laurence R. Helfer, “Backlash against international courts in west, east and southern Africa: causes and consequences”, *European Journal of International Law*, vol. 27, No. 2 (2016).

recurrence of violations and abuses, and that impunity for the crime of genocide, war crimes and crimes against humanity encourages their occurrence.¹¹⁵ In transitional justice contexts, individual criminal accountability must be implemented alongside other goals to address the justice needs of individuals.¹¹⁶

36. As the Secretary-General has noted, there has been a diversification of venues in which criminal accountability for human rights crimes may be pursued.¹¹⁷ The International Criminal Court plays an invaluable role in international accountability efforts, and has issued pioneering rulings, including with respect to sitting heads of State,¹¹⁸ and on jurisdiction.¹¹⁹ The last decades have also seen the increasing establishment of so-called hybrid courts, of mixed composition and jurisdiction, with both national and international aspects.¹²⁰ Such tribunals have contributed to ensuring accountability, including of high-ranking officials.¹²¹ Third States are making increased use of universal jurisdiction provisions in their domestic laws.¹²² Importantly, many ongoing individual accountability processes are taking place as a result of civil society efforts.¹²³

37. While essential, it is important to remember that these accountability venues do not fully satisfy the general demand for justice domestically,¹²⁴ and they are not meant to do so.¹²⁵ This highlights the importance of efforts to ensure that prosecution consistent with international standards takes place, where possible, in the State with the closest connection with the crime.

B. State-led investigation, prosecution and punishment of human rights violations and abuses amounting to international crimes

38. Several States have prosecuted serious human rights violations and abuses amounting to international crimes that have been committed on their territory. Recent examples include the prosecutions in the Democratic Republic of the Congo of public officials, including members of the armed forces and the national police, as well as members of armed groups.¹²⁶ In Colombia, the Special Jurisdiction for Peace has opened 11 so-called macrocases, focusing on the most grave and representative crimes committed in the course of the armed conflict, and has taken impressive measures to facilitate the participation of victims in the proceedings.¹²⁷

¹¹⁵ Human Rights Council, resolution 51/14. See also General Assembly resolution 67/1, para. 22, and contributions by Chile, El Hak Foundation for Freedom of Expression and Human Rights, and Stichting Global Human Rights Defence.

¹¹⁶ See https://www.ohchr.org/sites/default/files/documents/issues/transitionaljustice/sg-guidance-note/2023_07_guidance_note_transitional_justice_en.pdf, p. 13.

¹¹⁷ *Ibid.*, p. 16.

¹¹⁸ See e.g. International Criminal Court, Appeals Chamber, *Prosecutor v. Al-Bashir*, Summary of the Judgment, 6 May 2019, paras. 39 and 40, available at <https://www.icc-cpi.int/sites/default/files/itemsDocuments/Jordan-Summary-Al-Bashir-Judgment.pdf>.

¹¹⁹ See e.g. https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2021_01165.PDF; and https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2018_04203.PDF.

¹²⁰ “Rule-of-law tools for post-conflict States: maximizing the legacy of hybrid courts” (United Nations publication, 2008), p. 1.

¹²¹ Extraordinary African Chambers, *Prosecutor v. Hissene Habré*, Judgment, 30 May 2016, available at https://reparations.qub.ac.uk/assets/uploads/JugementCAEdAssises_PenalCivil_.pdf (in French).

¹²² See https://www.ohchr.org/sites/default/files/documents/issues/transitionaljustice/sg-guidance-note/2023_07_guidance_note_transitional_justice_en.pdf, p. 16.

¹²³ See paras. 46, 47 and 49 below.

¹²⁴ See https://www.ohchr.org/sites/default/files/documents/issues/transitionaljustice/sg-guidance-note/2023_07_guidance_note_transitional_justice_en.pdf, p. 16.

¹²⁵ Rome Statute of the International Criminal Court, art. 17. Several States operate with a similar requirement for the exercise of universal jurisdiction, either as a legal requirement or prosecution policy; see Cedric Ryngaert, “Subsidiarity and the law of jurisdiction”, 24 August 2014, available at <http://dx.doi.org/10.2139/ssrn.2523327>.

¹²⁶ A/HRC/48/47, para. 46.

¹²⁷ See <https://www.jep.gov.co/JEP/Paginas/Jurisdiccion-Especial-para-la-Paz.aspx> (in Spanish); A/HRC/52/25, paras. 30–32; and A/HRC/49/19, paras. 58–60.

39. However, in many contexts, shortages of human and financial resources and of technical and institutional capacity, along with the lack of mechanisms for ensuring the safety of victims and witnesses who participate in the proceedings, have constituted de facto obstacles to the investigation of serious human rights violations and the criminal prosecution of suspected perpetrators at the national level.¹²⁸ Other concerns relate to the lack of fair trial and other guarantees for defendants.¹²⁹

40. In 2021, the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence noted that some States resist bringing their nationals to trial for serious violations of human rights or of international humanitarian law or allowing an international body to do so.¹³⁰ He also expressed concern at the persistence of legislation allowing for amnesties, statutory limitations or non-retroactivity provisions, which prevent the investigation and prosecution of international crimes.¹³¹

41. Over many years, third States have increasingly come to play a pivotal role in accountability efforts. Many States have adopted principles of extraterritorial or universal jurisdiction in their domestic criminal legislation, to varying degrees.¹³² However, as noted by TRIAL International in its evaluation of trends for 2023, despite the incorporation of provisions relating to international crimes in the legal frameworks of the majority of countries globally, only 13 domestic jurisdictions – 10 of which are European – currently have officially opened extraterritorial cases.¹³³ It also noted that the number of States for which cases are open has increased,¹³⁴ revealing a trend of expansion in the geographic reach of accountability efforts by third States.

42. Through the clarification of criminal jurisdiction in domestic law, domestic courts have played an important role in facilitating the investigation of international crimes.¹³⁵ For example, in 2023, the French Court of Cassation interpreted French law and found that it allowed for the investigation of alleged war crimes, enforced disappearances and torture committed in the Syrian Arab Republic.¹³⁶ In Argentina, judicial investigations have been opened against the former Heads of State of Colombia, for so-called false positive cases, and of Nicaragua, for possible crimes against humanity in conjunction with the crackdown on protests in the State in 2018.¹³⁷

43. To overcome some of the complex challenges with which authorities are faced in investigating international crimes, several States have opened so-called structural investigations through specialized war crimes units,¹³⁸ and focus their investigation on the structures relating to potential international crimes and groupings of potential perpetrators.

¹²⁸ A/HRC/48/60, para. 45. See e.g. detailed findings of the Commission on Human Rights in South Sudan, para. 304, available at https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/sessions-regular/session52/A_HRC_52_CRP.3.pdf; and A/HRC/48/47, para. 49.

¹²⁹ For example, OHCHR, “Report on the human rights situation in Ukraine, 1 March 2024–31 May 2024” (3 July 2024), paras. 82, 97 and 98.

¹³⁰ A/HRC/48/60, para. 52. See also OHCHR, “Report on the human rights situation in Ukraine, 1 December 2023–29 February 2024”, paras. 101 and 104.

¹³¹ A/HRC/48/60, paras. 29–34.

¹³² A 2012 survey by Amnesty International found that domestic legislation in 147 States Members of the United Nations allows for the exercise of universal jurisdiction over one or more core international crimes; see <https://www.amnesty.org/en/documents/ior53/019/2012/en/>, p. 2.

¹³³ See https://trialinternational.org/wp-content/uploads/2024/04/UJAR-2024_digital.pdf, p. 11.

¹³⁴ Ibid.

¹³⁵ For an overview, see <https://trialinternational.org/universal-jurisdiction-tools/universal-jurisdiction-law-and-practice-briefing-papers/>.

¹³⁶ See Code of Criminal Procedure, art. 689-11; and Cour de Cassation, “Press release: universal jurisdiction of French justice for crimes committed in Syria”, 12 May 2023.

¹³⁷ See https://trialinternational.org/wp-content/uploads/2024/04/UJAR-2024_digital.pdf.

¹³⁸ See <https://iiim.un.org/what-we-do/>; Miriam Ingesson, “Structural criminal investigations in Sweden – reinventing investigations of international crimes”, *Scandinavian Studies in Law*, vol. 66 (2020); and https://trialinternational.org/wp-content/uploads/2023/11/UJAR-2023_13112023_updated.pdf, p. 10.

Such investigations contributed to the convictions in 2021 and 2022 of two Syrian officials in the so called al-Khatib cases for violations committed against thousands of victims.¹³⁹

44. States have also increasingly examined corporate involvement in international crimes.¹⁴⁰ For example, in November 2021, after several years of investigations, Swedish prosecution authorities brought criminal charges against two oil company top executives for complicity in war crimes in the Sudan between 1999 and 2003, and against the company itself, including a corporate fine and the forfeiture of economic benefits resulting from the crimes. The trial in the case opened in 2023 and is set to continue until 2026.¹⁴¹ Among other notable cases are court decisions in France confirming crimes against humanity investigations against a cement company for its conduct in the Syrian Arab Republic between 2012 and 2014,¹⁴² and an earlier case in the Kingdom of the Netherlands against a corporate executive for complicity in war crimes in Guinea and Liberia between 2000 and 2002.¹⁴³

45. With respect to individuals returning to their State of nationality from the Syrian Arab Republic, some States have adopted a practice of prosecuting individuals for international crimes.¹⁴⁴ In other cases, however, concerns of compliance with the duty to prosecute and punish international crimes have been raised where States instead prosecute the individuals exclusively under domestic terrorism legislation.¹⁴⁵

46. Civil society plays an invaluable role in encouraging investigation, prosecution and punishment of human rights violations amounting to international crimes. According to TRIAL International, civil society organizations have been involved in legal proceedings in over 56 per cent of the ongoing cases relating to the prosecution of international crimes through universal jurisdiction. Such involvement covers the filing of complaints, collaboration with or the provision of information to prosecuting authorities, the provision of support to the plaintiffs and participation as civil parties. This figure reaches 74 per cent in France, 83 per cent in Argentina and 100 per cent in Switzerland.¹⁴⁶

47. In particular with respect to accountability efforts relating to international crimes committed in the Syrian Arab Republic, Syrian civil society organizations have played an active role documenting violations and contributing to accountability efforts in Europe in cooperation with European civil society.¹⁴⁷ At the domestic level, civil society organizations are also engaged in capacity-building, such as TRIAL International's training programme for lawyers, magistrates, investigators and grass-roots civil society organizations in the Democratic Republic of the Congo and the Great Lakes region.¹⁴⁸ Civil society also plays a role in accountability efforts before international criminal courts and tribunals, such as by

¹³⁹ See https://trialinternational.org/wp-content/uploads/2023/11/UJAR-2023_13112023_updated.pdf, p. 10.

¹⁴⁰ See <https://www.ibanet.org/IBA-War-Crimes-Committee-shines-a-light-on-corporate-liability-cases>.

¹⁴¹ See <https://crd.org/tag/trial-reports-lundin/page/3/>.

¹⁴² See <https://www.ecchr.eu/en/case/lafarge-in-syria-accusations-of-complicity-in-grave-human-rights-violations/>.

¹⁴³ See <https://me.eui.eu/dieneke-de-vos/blog/corporate-accountability-dutch-court-convicts-former-timber-baron-of-war-crimes-in-liberia/>.

¹⁴⁴ European network for investigation and prosecution of genocide, crimes against humanity and war crimes and European Union Agency for Criminal Justice Cooperation, "Cumulative prosecution of foreign terrorist fighters for core international crimes and terrorism-related offences" (The Hague, 2020).

¹⁴⁵ See <https://international-review.icrc.org/articles/better-a-war-criminal-or-a-terrorist-a-comparative-study-916>; and <https://international-review.icrc.org/sites/default/files/reviews-pdf/2022-02/foreign-fighters-and-the-tension-between-counterterrorism-and-ihl-916.pdf>.

¹⁴⁶ See https://trialinternational.org/wp-content/uploads/2024/04/UJAR-2024_digital.pdf, p. 13.

¹⁴⁷ See https://www.ecchr.eu/fileadmin/Fachartikel/ECCHR_PP_SYRIA_EN_F2.pdf, p. 8.

¹⁴⁸ See <https://trialinternational.org/countries-post/democratic-republic-of-the-congo/>; and <https://trialinternational.org/latest-post/trial-delivers-its-first-regional-training-session-for-african-great-lakes-lawyers/>.

filing communications to the Office of the Prosecutor¹⁴⁹ and amicus briefs to the International Criminal Court,¹⁵⁰ and participation in reparations proceedings.¹⁵¹

C. Role of international bodies in supporting the investigation, prosecution and punishment of serious human rights violations and abuses amounting to international crimes

48. Accountability mechanisms, such as international commissions of inquiry, fact-finding missions and similar investigative mechanisms, play an increasing role in contributing to individual accountability for serious violations and abuses and their future prevention.¹⁵²

49. This is particularly due to their roles in collecting and acting as a repository of evidence, from which analysis of potential violations of international law follows.¹⁵³ The International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011 provides a notable example. As of December 2023, the International, Impartial and Independent Mechanism had received 325 requests for assistance from 16 jurisdictions, with 86 new requests in 2023. It has contributed by providing information and evidence in the investigation and prosecution of crimes against humanity and war crimes in France, Germany, the Netherlands (Kingdom of the) and Sweden.¹⁵⁴ The Independent Investigative Mechanism for Myanmar has indicated that it has shared information and evidence with domestic authorities and with the Office of the Prosecutor of the International Criminal Court relating to ongoing investigations.¹⁵⁵ The findings of such bodies have been cited regularly in the course of proceedings before international criminal courts and tribunals and have been relied upon as evidence.¹⁵⁶ As with domestic accountability efforts, civil society plays an important role in the work of such mechanisms through gathering information and sharing it with the mechanisms.¹⁵⁷

50. In addition, human rights bodies play a role in supporting accountability through their analysis and recommendations, including in relation to factors impeding accountability. For example, while the first team of international experts on the situation in Kasai, Democratic Republic of the Congo, mandated by the Human Rights Council had examined the perpetration of international crimes, the second team was mandated to support the implementation of recommendations made by the first team, issuing specific recommendations to domestic authorities to combat impunity, including on prosecution strategy, resourcing and recruitment policies of judicial authorities, and recruitment

¹⁴⁹ Rome Statute of the International Criminal Court, art. 15. See e.g. <https://academic.oup.com/jicj/advance-article/doi/10.1093/jicj/mqae009/7679314>.

¹⁵⁰ See <https://www.ecchr.eu/en/case/made-in-europe-bombed-in-yemen/>; and https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2019_06992.PDF.

¹⁵¹ Rome Statute of the International Criminal Court, art. 75.

¹⁵² See e.g. OHCHR, *Commissions of Inquiry and Fact-Finding Missions on International Human Rights and Humanitarian Law: Guidance and Practice* (2015), p. 2; and Federica D'Alessandra and others, *Anchoring Accountability for Mass Atrocities: The Permanent Support Needed to Fulfil UN Investigative Mandates* (Oxford Institute for Ethics, Law, and Armed Conflict, 2022), pp. 14 and 17.

¹⁵³ See e.g. S/2022/434, para. 112; Andrea Furger, "Can they deliver? The practice of joint investigation teams (JITS) in core international crimes investigations", *Journal of International Criminal Justice*, vol. 22, No. 1 (2024); Federica D'Alessandra, "UN accountability mandates in international justice", *Journal of International Criminal Justice*, vol. 21, No. 3 (2023); and <https://iiim.un.org/what-we-do/>.

¹⁵⁴ See <https://iiim.un.org/wp-content/uploads/2024/01/Bulletin-ENG-December-2023-Vjan23.pdf>.

¹⁵⁵ See <https://iiim.un.org/wp-content/uploads/2024/06/2024-June-Bulletin-EN.pdf>; and https://iiim.un.org/wp-content/uploads/2023/06/June_IIIM_Bulletin_English.pdf.

¹⁵⁶ C.E.M. Harwood, "Navigating between principle and pragmatism: the roles and functions of atrocity-related United Nations commissions of inquiry in the international legal order", PhD dissertation, Leiden University, 7 November 2018, pp. 217 and 218, available at <https://hdl.handle.net/1887/66791>.

¹⁵⁷ See e.g. D'Alessandra and others, *Anchoring Accountability for Mass Atrocities*, p. 23; and <https://iiim.un.org/wp-content/uploads/2022/01/IIIM-Bulletin-01-%E2%80%9393-Nov-2018.pdf>.

policies.¹⁵⁸ The Commission on Human Rights in South Sudan, also mandated by the Council, has conducted in-depth analysis on factors contributing to impunity in South Sudan and has issued a series of recommendations on measures to facilitate accountability.¹⁵⁹ Other human rights mechanisms play a contributing role in this respect, including special procedure mandate holders through their thematic and country visit reporting.¹⁶⁰

51. Lastly, coordination among accountability bodies can help optimize the preventive role of investigations and prosecutions. In practice, coordination efforts are carried out by a multitude of actors. Notably, the Office of the Prosecutor of the International Criminal Court plays a key coordinating role across accountability actors with respect to particular situations and frequently cooperates with and provides support and assistance to domestic authorities.¹⁶¹ Other actors include the International Criminal Police Organization¹⁶² and regional actors such as the European Union Agency for Criminal Justice Cooperation and the European Network for investigation and prosecution of genocide, crimes against humanity and war crimes.¹⁶³

IV. Conclusions and recommendations

52. **The rule of law and accountability play crucial roles in the prevention of human rights violations and abuses. The rule of law, as a principle of governance, is central to strengthening the capacity of the State to respect and protect human rights. One of the central features of the rule of law concerns accountability, which, in turn, is essential to prevent impunity and the recurrence of human rights violations and abuses. Measures to strengthen the rule of law and accountability also contribute to the achievement of the Sustainable Development Goals.**

53. **The Office of the United Nations High Commissioner for Human Rights recommends that States work to strengthen and deepen the rule of law, including through international cooperation and assistance, by taking measures such as:**

(a) **Ensuring that legislative frameworks prevent excessive concentration and arbitrary exercise of power, such as by limiting the lawmaking and discretionary powers of the executive branch;**

(b) **Ensuring accountability in the exercise of public powers, including through the implementation of internal and external oversight mechanisms and effective remedies available to affected individuals;**

(c) **Guaranteeing open and transparent public institutions in order to facilitate external oversight and access to information;**

(d) **Adopting a participatory approach to public decision-making, including with respect to women and youth, and respecting and protecting the rights to freedom of expression, peaceful assembly, association and meaningful participation across societies at large in the conduct of public affairs;**

(e) **Ensuring access to justice, in particular, by identifying the justice needs of the population and taking the steps necessary to ensure the accessibility of dispute settlement mechanisms.**

54. **In addition, States should adopt measures to strengthen public institutions to facilitate their role in preventing human rights violations and abuses, in particular, by:**

¹⁵⁸ [A/HRC/41/31](#), para. 80.

¹⁵⁹ See the detailed findings of the Commission on Human Rights in South Sudan.

¹⁶⁰ See e.g. [A/76/168](#), [A/HRC/41/36](#), [A/HRC/48/60](#) and [A/HRC/55/52/Add.1](#).

¹⁶¹ See e.g. <https://www.icc-cpi.int/sites/default/files/2024-04/2024-comp-policy-eng.pdf>; <https://www.icc-cpi.int/sites/default/files/2024-05/2024-05-14-otp-unsc-report-libya-eng.pdf>, paras. 27 and 28; and Office of the Prosecutor of the International Criminal Court, “Report on the situation in Colombia”, 30 November 2023, paras. 9–19.

¹⁶² [A/HRC/48/60](#), para. 80.

¹⁶³ See <https://www.eurojust.europa.eu/judicial-cooperation/practitioner-networks/genocide-network>.

(a) Ensuring that oversight institutions have an adequate legal basis and resources to guarantee their functioning and independence;

(b) Ensuring the independence, impartiality and integrity of the judiciary, including by taking steps to prevent, in law and in practice, interference in the judiciary by other branches of government, promoting the independence of the bar and guaranteeing the autonomy of prosecution services;

(c) Fostering a professional and accountable security sector, including by promoting clear and effective lines of command, control and responsibility, reviewing recruitment, selection and promotion policies, promoting regular training and testing on international human rights and humanitarian law, and ensuring that internal and external oversight mechanisms are able to effectively address misconduct.

55. To strengthen the rule of law at the international level, the Office of the High Commissioner recommends that States:

(a) Ratify or accede to the core United Nations human rights treaties and grant jurisdiction for United Nations human rights treaty bodies and other international human rights mechanisms to hear complaints by individuals and States;

(b) Accept compulsory jurisdiction of the International Court of Justice and other international dispute settlement mechanisms that may consider inter-State disputes relating to human rights violations or abuses;

(c) Promptly implement judgments, decisions and views rendered by international dispute settlement mechanisms, including United Nations human rights treaty bodies, in good faith and in accordance with international law.

56. Individual accountability for human rights violations and abuses amounting to international crimes is key to prevent impunity, future violations and abuses. The Office of the High Commissioner therefore recommends that States:

(a) Consider ratifying or acceding to the Rome Statute of the International Criminal Court;

(b) Adopt provisions allowing for the exercise of extraterritorial or universal jurisdiction over international crimes, consistent with international law, and consider reviewing prosecutorial policies and strategies to facilitate their use;

(c) Cooperate in the investigation and prosecution of human rights violations or abuses amounting to international crimes, including through providing support to relevant international mechanisms engaged in investigation efforts;

(d) Support efforts by civil society to contribute to individual accountability.