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Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff

Summary

This is the first annual report submitted to the Human Rights Council by the first Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff.

Following the introduction, in chapter II of the report, the Special Rapporteur lists his key activities undertaken from 1 May to 25 July 2012. In chapter III, he focuses on the foundation of the mandate and presents an argument for the importance of taking a comprehensive approach to address gross violations of human rights and serious violations of international humanitarian law, as noted in the resolution establishing the mandate, an approach that combines the elements of truth-seeking, justice initiatives, reparations and guarantees of non-recurrence in a complementary and mutually reinforcing manner. In chapter IV, he sketches the implementation strategy for the mandate, highlighting the importance of carrying out further work on the linkages between these four different elements of the mandate, of drawing tighter connections with other types of policy interventions such as development and security policies, and of improving the efficacy of the measures in post-conflict and other contexts in which institutions are under severe strain.

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I. Introduction

1. The present report is submitted by the first Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff, to the Human Rights Council pursuant to its resolution 18/7. In the report, the Special Rapporteur lists his key activities undertaken from 1 May to 25 July 2012 and describes the foundations of, and the implementation strategy for, the mandate.

II. Activities of the Special Rapporteur

2. After assuming functions on 1 May 2012, the Special Rapporteur participated in an informal discussion on “Transitional Justice and the Rule of Law”, held on 7 May at the United Nations in New York and hosted by Switzerland, Tunisia and the International Center for Transitional Justice, with an intervention on the mandate, the importance of its comprehensive approach and the relationship between transitional justice and the rule of law.

3. On 30 May 2012, 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, the Special Rapporteur gave a speech about the 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.

4. On 9 and 10 June 2012, the Special Rapporteur took part in a regional workshop on “The prevention of torture in the context of democratic transitions in North Africa”, held in Rabat, Morocco, and co-organized by the Inter-ministerial Delegation for Human Rights of Morocco, the Association for the Prevention of Torture and the Office of the United Nations High Commissioner for Human Rights (OHCHR), and made an oral intervention in the session “Dealing with the legacy of torture through transitional justice mechanisms”.

5. On the occasion of the annual meeting of special procedures, on 13 June 2012, the Special Rapporteur held a general briefing for Member States, in which he outlined his initial thoughts on the implementation of the mandate and engaged in a dialogue with State representatives. During his stay in Geneva, he also met with the Ambassadors of Guinea, Spain and Uruguay.

6. From 27 to 29 June 2012, he attended a meeting organized by OHCHR on developments in transitional justice, which brought together academics, practitioners and representatives of OHCHR field presences. The Special Rapporteur intervened in an interactive session with the participants, discussing developments of, and practical challenges to, the area of transitional justice.

7. On 17 July 2012, the Special Rapporteur was the moderator and gave introductory remarks at a panel discussion organized by the United Nations Entity for Gender Equality and the Empowerment of Women (UN Women) and the United Nations Development Programme in New York to introduce a book entitled *Transitional Justice and Displacement*,[1] dealing with the contributions that the implementation of the measures under the mandate can make to the search for durable solutions to the problem of displacement, especially for women, who are particularly affected by displacement.

[1] Ed. Roger Duthie (New York, 2012, The Social Science Research Council).

8. Since his appointment, the Special Rapporteur has engaged in consultations with a great number of experts and civil society organizations exchanging views about priorities and strategies for fulfilling the mandate. Among others, he has consulted with Amnesty International, the International Court of Justice, the Fédération internationale des droits de l'homme (FIDH), Center for Legal and Social Studies (CELS), the International Crisis Group, Center for Studies of Law, Justice and Society (DeJusticia) and the Redress Trust. He also had a consultation with the President of the Assembly of State Parties of the International Criminal Court. At the United Nations level, he has held meetings with OHCHR, UN Women, and various participants in the ongoing discussions at the General Assembly regarding the High-level Segment on the rule of law to take place on 24 September 2012 during its next session. With the support of OHCHR, he has started the process of organizing regional consultations on the mandate, the first two of which are being planned for the second semester of 2012.

9. The Special Rapporteur thanks the Government of Uruguay for having extended an invitation to visit the country. During the reporting period, he sent requests for country visits to Guatemala, Guinea, Nepal and Spain. He also sent a letter, jointly with the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, to the Government of Brazil, in relation to the National Truth Commission, offering support and cooperation, including through the provision of technical assistance or advisory services.

III. Foundations of the mandate

A. Scope of the mandate

1. Human Rights Council resolution 18/7

10. Human Rights Council resolution 18/7, adopted by consensus and with the support of almost 80 Member States, established the mandate of a Special Rapporteur to "deal with situations in which there have been gross violations of human rights and serious violations of international humanitarian law". Thematically, the mandate concentrates on measures intended to promote "truth, justice, reparations, and guarantees of non-recurrence". Specifically, the resolution mentions "individual prosecutions, reparations, truth-seeking, institutional reform, vetting of public employees and officials, or an appropriately conceived combination thereof". The resolution tasks the mandate holder to identify potential additional elements with a view to recommend ways and means to improve and strengthen the promotion of the four elements of the mandate.

11. The resolution assigns twelve tasks to the Special Rapporteur, among them: providing, upon request, technical advice on issues pertaining to the mandate; gathering information on national situations; identifying good practices; conducting country visits; and making recommendations concerning 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. Operationally, the resolution specifies that the Special Rapporteur should carry out these tasks in regular dialogue and close coordination with Governments, international and regional organizations, national human rights institutions and non-governmental organizations, as well as relevant United Nations bodies and mechanisms, integrating a gender perspective and applying a victim-centred approach.

12. In the resolution, the Human Rights Council expresses its expectation that the implementation of a comprehensive approach to the four elements should help "ensure accountability, serve justice, provide remedies to victims, promote healing and

reconciliation, establish independent oversight of the security system and restore confidence in the institutions of the State and promote the rule of law in accordance with international human rights law”. More broadly, these proximate aims are expected to contribute to the accomplishment of the following goals: “preventing the recurrence of crises and future violations of human rights, to ensure social cohesion, nation-building, ownership and inclusiveness at the national and local levels and to promote reconciliation”.

2. International standards

13. Resolution 18/7 makes reference to a number of applicable international instruments regarding the mandate, including the set of principles for the protection and promotion of human rights through action to combat impunity and the updated set of principles, which were accompanied by explanatory reports[2] prepared by the independent expert; and the 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, adopted and proclaimed by the General Assembly in 2005. The Special Rapporteur stresses the importance of these documents and standards and has the intention to develop them further throughout the term of his mandate.

14. Regarding human rights treaty provisions, resolution 18/7 refers to 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, and other relevant international human rights law and international humanitarian law instruments. The resolution also makes explicit reference to the International Convention for the Protection of All Persons from Enforced Disappearance and its article 24, paragraph 2, which sets out the right of victims to know the truth regarding the circumstances of the enforced disappearance, the progress and results of the investigation and the fate of the disappeared person and State party obligations to take appropriate measures in this regard. The Convention’s preamble reaffirms the right to freedom to seek, receive and impart information to that end. The Special Rapporteur notes that the various elements of the mandate have been the subject of uneven legal development, and that he intends to contribute to developing them during the course of his tenure.

B. Historical context

15. The measures of truth-seeking, justice initiatives, reparation and guarantees of non-recurrence emerged first as practices and experiences in post-authoritarian settings, such as the Latin American countries of the Southern Cone and, to a lesser extent, those in Central and Eastern Europe and South Africa.[3] Despite all their differences, these settings shared the following main characteristics. First, the countries concerned had achieved relatively high degrees of both horizontal and vertical institutionalization, that is, their institutions could cover all their national territories and, their legal systems already contained provisions for the regulation of critical areas of the relationship between citizens and State

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[2] Independent study on best practices, including recommendations, to assist States in strengthening their domestic capacity to combat all aspects of Impunity, E/CN.4/2004/88;report of the independent expert to update the Set of Principles to combat impunity, E/CN.4/2005/102.

[3] Eventually, these measures came to be referred to as “transitional justice”. The present document will occasionally use this term as shorthand for the comprehensive approach to the implementation of the four measures under the mandate. The use of the term in the present document does not denote a special kind of justice.

institutions, notwithstanding which they were not apt to prevent the gross and serious violations that occurred. Second, the measures that emerged were adopted as a response to a particular kind of violation, namely, those associated with the abusive exercise of State power through precisely those institutions. Therefore, part of the aim of the transitions in these post-authoritarian situations could be understood in terms of the recovery of both institutions and traditions that had been brutally disrupted.

16. More recently, the measures defined under the mandate have been progressively transferred from their "place of origin" in post-authoritarian settings, to post-conflict contexts and even to settings in which conflict is ongoing or to those in which there has been no transition to speak of. However, there are important differences between these types of contexts; whereas in the authoritarian settings the violations typically involve significant abuse of State power, in many conflict settings, in which institutions already find themselves under severe strain, the violations often come about as a result of generalized social conflict in which, among other factors, there is a plethora of violent agents. These settings, which are often marked not just by weak institutions but also by severe economic scarcity, generate challenges for the successful implementation of measures that were designed presupposing the feasibility of relatively easy attributions of responsibility and institutions that could plausibly administer those attributions and disclose the truth of what took place, that were strong enough to bear reform in the short term and that could feasibly avail themselves of the resources required to establish reparations programmes for victims.

17. To complicate matters further, the recent transitions in the Middle East and North Africa may require yet another extension of the domain of application of the measures under the mandate. While these transitions bear some important similarities to the transitions from authoritarianism as described, they have distinctive characteristics that need to be taken into account. For example, while most typical post-authoritarian transitions were led by previously existing parties and aimed at a "return" to temporarily interrupted traditions and institutions, the most recent transitions in these regions cannot be characterized as such. Moreover, a common feature of these recent transitions is the prominent role that claims relating to economic rights occupy in these transitions; claims against corruption and in favour of economic opportunities have been raised to a par in the regions with claims for the redress of violations of civil and political rights.

18. In view of the increasing trend to utilize the measures of truth-seeking, justice initiatives, reparation and guarantees of non-recurrence without heeding the characteristics of the contexts in which they are applied, the Special Rapporteur underlines that it is crucial to clearly identify and assess the preconditions in any given country and address them in a manner fine-tuned, targeted and sensitive to context.

C. Normative concept

19. Despite the rapidly accumulating stock of experiences in the implementation of the measures under this mandate, which, again, for short, will be referred to here by the use of the expression "transitional justice", misconceptions about those mechanisms have remained. The Special Rapporteur stresses that these mechanisms are neither meant to be a "soft form of justice" nor should they be considered as a means of pursuing the aim of reconciliation bypassing the implementation of the four measures under the mandate.

20. The Secretary-General's report on the rule of law and transitional justice in conflict and post-conflict societies (S/2004/616), to which the resolution refers, describes transitional justice as "the full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation" (para. 8), enumerates the

main components of a transitional justice policy mentioning explicitly criminal justice, truth-telling, reparations and vetting. It furthermore stipulates that, far from being isolated measures, these mechanisms should be thought of as parts of a whole: "Where transitional justice is required, strategies must be holistic, incorporating integrated attention to individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or an appropriately conceived combination thereof" (para. 26).

21. The Special Rapporteur takes the four components of the mandate, truth, justice, reparations and guarantees of non-recurrence as a set of measures that are related to, and can reinforce, one another, when implemented to redress the legacies of massive human rights violations and abuses. Redressing the legacies of abuse means primarily giving force to those human rights norms that were systematically or grossly violated.[4] The resolution considers the measures to be also appropriate for redressing the legacies of serious violations of international humanitarian law. As such, the grounding of their legal obligation lies in the documents cited in the resolution and other relevant documents that spell out the legal obligations of States in the redress of gross violations of human rights and serious violations of international humanitarian law. A functional analysis that takes seriously the ends that can be reasonably sought through the implementation of the measures can nevertheless provide useful guidance.[5] While arguably, they all serve the ultimate end of pursuing justice, a less abstract functional analysis that distinguishes between the immediate, mediate and final ends of the measures would say that the four measures can be conceptualized as assisting in the pursuit of two mediate goals, i.e., providing recognition to victims and fostering trust, and two final goals, i.e., contributing to reconciliation and strengthening the rule of law.[6]

D. Comprehensive approach and interrelationship of the four elements

22. In the face of the immensity of the task of redressing the legacies of gross violations of human rights and serious violations of international humanitarian law, the limited reach of each of the measures that form part of the mandate should be acknowledged from the outset. The weakness of each of these measures alone provides a powerful incentive to seek ways in which each can interact with the others in order to make up for their individual limitations. International experience, as well as research, suggests that the comprehensive implementation of the four components of the mandate provides stronger reasons for various stakeholders, foremost amongst them, the victims, to understand the measures as efforts to achieve justice in the aftermath of violations than their disconnected or disaggregated implementation.[7]

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[4] See Pablo de Greiff, "Theorizing Transitional Justice", in *Transitional Justice: NOMOS LI*, Melissa S. Williams, Rosemary Nagy and Jon Elster, eds., (New York and London, NYU Press, 2012).

[5] See also Pablo de Greiff, "Some thoughts on the development and present state of transitional justice", *Journal for Human Rights*, vol 5, No. 2 (2011).

[6] The qualifiers "mediate" and "final" should not be understood primarily in temporal or chronological terms, but rather in terms of the causal (in)sufficiency of a particular measure to bring about the end attributed to it. The mediate aims of a measure are those aims which it is reasonable to think that the implementation of the measure may further, but whose accomplishment may also require a number of different measures. "Final ends" are those whose attainment is causally even more distant, and, therefore whose realization depends upon the contribution of an even larger number of factors, whose role, relatively speaking, increases in importance. See in detail Chapter III, section E, below.

[7] Morocco is an interesting test case of this claim, as it has implemented some of these measures, first in isolation from one another and, a few years later, in a more integrated fashion. From 1999 to 2001,

23. Practice has shown that isolated and piecemeal prosecutorial initiatives have not quelled the claims for forms of justice other than mere prosecution.[8] There is nothing unusual about criminal justice in this respect. The same is true of all other measures under the mandate; truth-seeking exercises, even thorough ones,[9] when implemented on their own, are not taken to be coterminous with justice, for adequate redress is not exhausted by disclosure. Justice is not merely a call for insight but also requires action on the truths disclosed. Similarly, reparations in the absence of prosecutions, truth-seeking or institutional reform can easily be seen as an effort to buy the acquiescence of victims. Finally, measures to reform institutions, such as vetting, in the absence of the other mechanisms, will be both inadequate to respond to the violations to which they seek to respond and insufficient to guarantee non-recurrence.

24. The Special Rapporteur emphasizes that success in the implementation of the four measures under the mandate, and the likelihood that they will be interpreted as justice measures, depends upon paying heed to the tight and bidirectional relations between them when designing the relevant programmes. To illustrate, just as reparations call for truth-telling if the benefits are to be interpreted as a justice measure, truth-telling calls for reparations if words are to be seen as more than inconsequential chatter. Similarly, beneficiaries of reparations programmes are given stronger reasons to regard the sort of benefits usually conferred by these programmes as reparations (as opposed to merely compensatory measures)[10] if they proceed in tandem with efforts to prosecute human rights violators. Conversely, since criminal prosecutions without reparations may be thought to provide no direct benefit to victims other than a sense of vindication that otherwise does not change the circumstances of their lives, a policy based exclusively on prosecution is likely to be experienced by victims as an insufficient response to their own justice claims. Finally, vetting office holders for past violations is an important complement to prosecutions, for victims will have little reason to trust institutions that continue to be largely populated by rights abusers even if a few have been prosecuted. But vetting without substantive measures of corrective justice, consisting in a mere dismissal, will be unlikely to be seen as a significant contribution to justice given the magnitude of the violations that trigger it.

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the Independent Arbitration Instance (IIA) operated as a stand-alone compensation commission. In January 2006, after two years of operation, the Equity and Reconciliation Commission (IER) made its report public, including its decisions concerning reparations. In this instance, reparations were part and parcel of a transitional justice policy that linked truth-telling and reparations closely. Furthermore, unlike IIA, which provided monetary compensation alone, IER established a programme involving services including health benefits, amongst others.

[8] See the results of the research directed by Harvey Weinstein and Eric Stover (eds.) in *My Neighbor, My Enemy: Justice and Community in the Aftermath of Mass Atrocity* (2004, Cambridge University Press), exploring both the potential and limitations of International Criminal Tribunal for the Former Yugoslaviaand the International Criminal Tribunal for Rwanda, and making a persuasive case that international tribunals work best in conjunction with a variety of other measures, including local initiatives more attentive to social integration and reconstruction and the needs and wishes of those more directly affected by violence.

[9] See Comisión para el Esclarecimiento Histórico, *Informe de la Comisión para el Esclarecimiento Histórico* “Guatemala, Memoria del Silencio”. See also, Oficina de Derechos Humanos del Arzobispado de Guatemala, *Informe del Proyecto Interdiocesano de Recuperación de la Memoria Histórica*, “Guatemala, Nunca Más”.

[10] The difference between mere compensation and reparation is that reparations, in order to be understood as such, must be accompanied by some sort of acknowledgment of responsibility (which need not be an acknowledgment of culpability).

25. This pattern of bidirectional relations between reparations and the other transitional justice measures can be replicated across the board. Criminal prosecutions, particularly considering their scarcity, can nevertheless be interpreted by victims as a justice measure if they are accompanied by other truth-seeking initiatives. Truth-seeking initiatives, for their part, need to be saved from being interpreted as a form of whitewash in which the truth emerges but no consequences follow. Similarly, victims will be given reasons to see criminal trials as justice being done if trials constitute one of several accountability measures that the new authorities are implementing, including the vetting of those responsible for human rights violations. Conversely, vetting of public officials must be accompanied by the creation of robust prosecutorial mechanisms if vetting is to be reasonably seen as more than an administrative, bureaucratic initiative. The web of interrelationships between the four measures under the mandate is robust indeed.

26. The point of highlighting these interrelationships is not only for conceptual clarity. For measures that are intended to respond to the legacies of irreparable violations to "succeed", at the least, reasons must be given to understand these measures not merely in terms of expediency, but as efforts to achieve justice, notwithstanding their limitations. This is a sort of threshold condition beyond which lie more practical questions of satisfaction. Regarding the reaction of victims, in particular, to transitional justice programmes, there are two distinct concerns: one is that they may consider the programmes insufficient on many dimensions (e.g., not enough prosecutions, personnel vetted out of certain institutions or reparation benefits). A different concern is that they may consider the programmes not just insufficient but *unfair* or unjust, in the fundamental sense of not counting as justice initiatives to begin with.

27. The various measures should be "externally coherent", meaning that they should be conceived of and implemented not as discrete and independent initiatives but rather as parts of an integrated policy.[11] Clarifying these interrelationships also helps us see why a bargain that has been tempting in many experiences is likely to be self-defeating. This is the second practical implication of the arguments. Measures should not be traded off against one another. Authorities must resist the tendency to expect victims to ignore lack of action in one of these areas because action is being taken in others. In addition to conflicting with international obligations that the State may have with respect to *each* of the measures under this mandate, such policy is likely to undermine the possibility that whatever measures the Government does implement will be interpreted as justice measures.

E. Goals of truth-seeking, justice and reparations initiatives and guarantees of non-recurrence

28. As suggested in chapter III, section C, the four elements under the mandate serve to assist in the pursuit of two mediate goals, i.e. providing recognition to victims and fostering trust, and two final goals, i.e. contributing to reconciliation and to strengthening the rule of law.

[11] See Pablo de Greiff, "Justice and Reparations", in *The Handbook of Reparations*, Pablo de Greiff, ed. (Oxford University Press, 2006), for an elaboration of the notions of internal and external coherence in transitional justice programming.

1. Recognition

29. Almost without fail, one of the first demands of victims is to obtain recognition of the fact that they have been harmed. What, however, is involved in such recognition?[12] The sort of recognition at issue is complex. It is important but not sufficient to acknowledge the victims' suffering and their capacity to endure: victims of natural disasters, for example, can share those characteristics. But violations are not simply akin to natural disasters. It is therefore fundamental to acknowledge that the victims have been wronged, which is possible only by appealing to norms.[13] What is indispensable, and what transitional justice measures seek to accomplish, is to recognize that the victim is the holder of rights. This entails not only the right to seek for avenues of redress that can assuage suffering but also to restore the victim's rights that were so brutally violated and affirm her or his standing as someone who is entitled to make claims, on the basis of rights, and not simply as a matter of empathy, or any other type of consideration.

30. To illustrate, criminal justice can be interpreted as an attempt to provide recognition to victims by denying the implicit claim of superiority made by the criminal's behaviour through a sentence that is meant to reaffirm the importance of norms that grant equal rights to all.[14] Furthermore, while truth-seeking rarely discloses facts that were previously unknown, they still make an indispensable contribution in officially and publicly acknowledging these facts.[15] The acknowledgment is important, because it constitutes a form of recognizing the significance and value of persons as individuals, as victims and as holders of rights. Reparations provide the material form of the recognition owed to an equal rights holder whose fundamental rights have been violated. In the light of the difficulties and the "impunity gap" that normally accompany prosecutorial efforts (countries have found it difficult to prosecute each and every person who may have been involved in gross violations of human rights and serious violations of international humanitarian law) and of the potential charge that truth-telling, on its own, is "inconsequential talk", reparations buttress efforts aimed at recognition by demonstrating a sufficiently serious commitment so as to invest resources and, in well-crafted programmes, by giving beneficiaries the sense that the State has taken their interests to heart. Finally, institutional reform, including vetting, is guided by the idea of guaranteeing the conditions under which individuals can relate to one another and to the authorities as holders of equal rights.

31. In summary, while each of the elements under the mandate may have an immediate aim or aims of its own, all of them can be utilized to pursue the goal of providing recognition to victims as individuals and as victims, but also, and most fundamentally, as holders of rights.

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[12] On the notion of recognition, see, among others, Axel Honneth, *The Struggle for Recognition: The Moral Grammar of Social Conflicts* (Cambridge and Malden, Polity Press, 1995) and *Disrespect: The Normative Foundations of Critical Theory* (Polity Press, 2007).

[13] Joel Feinberg, for example, argues that there are two different ways of understanding "harms": harm as a setback to interests, and harm as a wrong to another person. Only the latter is relevant to the law. See Feinberg, *Harm to Others*, vol. 1, *The Moral Limits of the Criminal* (New York and Oxford, Oxford University Press, 1984), pp. 31–36. Recognizing victims as rights holders obviously accentuates the normative dimension of recognition.

[14] See Jean Hampton, "A New Theory of Retribution" in *Liability and Responsibility: Essays in law and morals*, R.G. Frey and Christopher W. Morris, eds. (Cambridge University Press, 1991).

[15] See Lawrence Weschler, "Afterword" in *State Crimes: Punishment or Pardon* (Aspen Institute report).

2. Trust

32. The other mediate aim that the components of the mandate seek to attain is the promotion of trust. Trust in this context is meant to involve both trust between individuals and trust of the individuals in State institutions. As the resolution 18/7 puts it, the expectation is that the implementation of the measures will "restore confidence in the institutions of the State". Trust is not the same as mere predictability or empirical regularity; it involves an expectation of a shared normative commitment and, therefore, develops out of a mutual sense of commitment to these shared norms and values.

33. Trusting institutions means knowing and recognizing as valid the values and norms guiding an institution and deriving from this commitment the assumption that an institutional set-up resting on such norms and values makes sufficient sense to a sufficient number of people to motivate their ongoing active support for these institutions and the compliance with their grounding norms and values. Successful institutions generate a feedback loop: they make sense to actors who will in turn support them and comply with what the institutionally defined order prescribes.[16] In conclusion, trusting an institution amounts to knowing that its constitutive rules, values and norms are shared by its members or participants and are regarded by them as binding.

34. To illustrate how transitional justice measures can contribute to (re)building this type of confidence, it should be noted that prosecutions reaffirm the relevance of the norms that perpetrators violated, norms which turn natural persons into rights holders. Judicial institutions, particularly in contexts in which they have traditionally been essentially instruments of power, show their trustworthiness if they can establish that no one is above the law. Truth-seeking can foster trust by responding to the anxieties of those whose confidence was shattered by experiences of violence and/or abuse, who are fearful that the past might repeat itself. An institutionalized effort to confront the past might be seen by those who were formerly on the receiving end of violence as an effort in good faith to come clean, understand long-term patterns of socialization and the distribution of power and opportunities and thereby initiate a new political project around norms and values that this time are truly shared.[17] Reparations can foster trust by demonstrating the seriousness with which institutions now take rights violations. Trust is bolstered when, even under conditions of scarcity and competition for resources, the State responds to the obligation to fund programmes that benefit those who were formerly not only marginalized but abused.[18] Finally, vetting of public officials can induce confidence by demonstrating a commitment to systemic norms governing employee hiring and retention, disciplinary oversight and prevention of cronyism.[19]

35. Both recognition and trust are preconditions and consequences of justice. A system of justice unwilling to take seriously the status of its members as holders of rights is unimaginable.[20] So is one that systematically fails to materialize the commitments to the

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[16] Claus Offe, "How Can We Trust Our Fellow Citizens?" in *Democracy and Trust*, Mark Warren, ed., (Cambridge University Press, 1999), pp. 70–71.

[17] See Pablo de Greiff, "Truth Telling and the Rule of Law" in *Telling the Truths: Truth Telling and Peace Building in Post-Conflict Societies*, Tristan Anne Borer, ed. (Notre Dame, University of Notre Dame, 2006).

[18] See De Greiff, "Justice and Reparations".

[19] See Pablo de Greiff, "Vetting and Transitional Justice" in *Justice as Prevention: Vetting Public Employees in Transitional Societies*, Alexander Mayer-Rieckh and Pablo de Greiff, eds. (Social Science Research Council, 2007).

[20] As Jürgen Habermas puts the point, "the legal medium as such presupposes rights that define the status of legal persons as bearers of rights". Habermas and William Rehg, *Between Facts and Norms:*

norms that make it a trustworthy system for the resolution of conflicts amongst rights-holders. Conversely, legal systems, when they operate well, also catalyse the expansion of the relevant forms of recognition and trust; the effective extension of rights to some has historically unleashed processes of inclusion, and the legal stabilization of expectations boosts confidence by diminishing the costs of trusting others.

3. Reconciliation

36. The idea of reconciliation has played an important role in some of the contexts in which the measures under this mandate have been implemented. Indeed, some of the truth commissions in countries that have implemented these measures either use the term in their very names or mention this as one of their aims.[21] Resolution 18/7 refers to reconciliation as one of the expected outcomes of the implementation of the four measures at its core (preambular paras. 11 and 12).

37. The Special Rapporteur emphasizes that, both on the basis of international experience and, more proximately, the resolution that creates the mandate, reconciliation should not be conceived as either an *alternative* to justice or an aim that can be achieved independently of the implementation of the comprehensive approach to the four measures (truth, justice, reparations and guarantees of non-recurrence).

38. A conception of reconciliation that coheres both with these experiences and the text of the resolution, and that at the same time would clarify the contribution that the implementation of the four measures can make to its achievement would posit that reconciliation is, at minimum, the condition under which individuals can trust one another as equal rights holders again or anew. That means that individuals under the jurisdiction of a given State are sufficiently committed to the norms and values that motivate their ruling institutions, that individuals are sufficiently confident that those who operate those institutions do so also on the basis of those norms and values – including the norms that turn individuals into rights holders – and sufficiently secure about other individuals' commitment to abide by and uphold these norms and values.

39. To the extent that the implementation of the four measures under this mandate can provide recognition and foster trust in the ways described, it can also contribute to the process of reconciliation understood in the manner just sketched. However, the Special Rapporteur highlights that implementing these measures does not guarantee that reconciliation will be achieved. While transitional justice measures can contribute to making institutions trustworthy, actually trusting institutions is something that requires an attitudinal transformation that the implementation of the measures, again, can ground but not produce. Such an attitudinal change calls for initiatives that target a more personal and less institutional dimension of a transition. Primary among these are official apologies which go beyond generic acknowledgments of responsibility and can play an important role in aiding the required attitudinal transformation. Other measures that have the potential to contribute are commemorations, the establishment of memorials and, very importantly, a reform of the educational systems.

Contributions to a Discourse Theory of Law and Democracy (Cambridge and Malden, Polity Press, 1996), p. 119. See also Habermas, "On Legitimation through Human Rights" in *Global Justice and Transnational Politics*, Ciaran E. Cronin and Pablo de Greiff, eds. (The MIT Press, 2002).

[21] E.g., the South African Truth and Reconciliation Commission, Comisión Nacional de Verdad y Reconciliación of Chile, Comisión de Verdad y Reconciliación of Peur and the Equity and Reconciliation Commission of Morocco, among others.

4. Strengthening the rule of law

40. Promoting the rule of law is one of the aims frequently attributed to transitional justice measures. As an illustration, virtually all truth commissions to date have used the concept both in an explanatory role (lack of respect for the principles of the rule of law is one of the factors leading to the rights violations under scrutiny) and as one of the objects of their work (their recommendations are intended to strengthen the rule of law).[22] Scholars largely agree both about the centrality of the concept and the usefulness of transitional justice measures in efforts to re-establish the rule of law.[23] Resolution 18/7 follows suit, declaring that the comprehensive implementation of the four elements aims to "promote the rule of law in accordance with international human rights law" (preambular para. 12).

41. To illustrate the contribution of the various aspects of the mandate to the rule of law, the Special Rapporteur outlines a number of examples.[24] Criminal trials that offer sound procedural guarantees and that do not exempt from the reach of justice those who wield power demonstrate the generality of law; truth-seeking exercises that contribute to understanding the many ways in which legal systems failed to protect the rights of citizens provide the basis on which, *a contrario*, legal systems can behave in the future; reparations programmes that try to redress the violation of rights serve to exemplify, even if ex post facto, the commitment to the notion that legal norms matter; institutional and personnel reform measures, even those basic reforms consisting merely of the screening and dismissing of those who abused their positions, increase the integrity of rule of law systems.

42. Furthermore, the implementation of transitional justice measures plays a strong catalytic role in the process of civil society organization.[25] There is sufficient international experience with transitional justice measures now to assert confidently that one of the virtually inevitable consequences of even putting one of these measures for discussion on the public agenda in a country – let alone implementing one such programme – is the formation of a plethora of civil society organizations. This is as true of reparations measures as it is of truth commissions, and as true in South Africa as it is in Morocco and Peru. A strong civil society is not only important in order to guarantee broad local ownership of transitional justice measures, but, more generally, it is an important correlate of the rule of law and its absence a common legacy of systematic rights violations; certain types of violations are, precisely, intended in part to impede the free operation of civil society including in the public sphere for that impedes the coalescence of effective peaceful opposition.[26] By contrast, catalysing the organization of groups is empowering, at least in

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[22] See, for example, Security Council report entitled, "From Madness to Hope: The 12-year War in El Salvador: Report of the Commission on the Truth for El Salvador", S/25500, chapter VTruth and Reconciliation Commission, "Institutional Hearing: The Legal Community" in *Truth and Reconciliation Commission of South Africa Report* (London, Macmillan Reference Limited, 1998), esp. vol. 4, chap. 4; Comisión de Verdad y Reconciliación of Peru, "Los factores que hicieron posible la violencia", vol. VIII, No. 2, in *Informe Final* (Lima, Comisión de Verdad y Reconciliación, 2003), esp. chap. 1, part 4.

[23] See, e.g. Ruti Teitel, "Transitional Jurisprudence: The Role of Law in Political Transformation", *Yale Law Journal*, vol. 106, No. 7 (1997), pp. 2009–2080.

[24] See also the Special Rapporteur's forthcoming report to the General Assembly at its sixty-seventh session.

[25] For the example of Peru, see Lisa Magarrell and Julie Guillerot, *Reparaciones en la Transición Peruana: Memorias de un Proceso Inacabado*, chap. 6.

[26] As Hannah Arendt puts it, "totalitarian government, like all tyrannies, certainly could not exist without destroying the public realm of life, that is, without destroying, by isolating men, their political capacities". *The Origins of Totalitarianism*, 2nd ed. (Harcourt Inc., 2009) p. 475.

part in virtue of the “power of aggregation”. In the face of systematic, organized violence, it makes a difference whether one has to respond to it alone or as part of a group. Moreover, the crucial point is not simply one of numbers, but of the characteristic activities to which civil society organizations thus formed devote themselves; these have as their core claims-raising, i.e., not pleading, but asserting recognition of status, entitlements, and rights.

43. The claim that the implementation of the measures under this mandate can make a contribution to strengthening the rule of law requires two qualifications, however. First, clearly, the measures cannot, on their own, bear the weight of either bringing about or sustaining the rule of law. In addition to political will, overcoming the legacies of gross human rights violations and serious violations of international humanitarian law will require a whole host of interventions (including broad constitutional and legal reforms, development programmes, rebalancing structural inequalities, overcoming patterns of exclusion and marginalization, etc.) with which transitional justice measures ought to be coordinated.

44. Second, the concept of the rule of law to which transitional justice has so often been said to contribute is not a purely formalist notion, as evidenced by the fact that many of the countries where transitional justice measures have been implemented are countries in which the rule of law, understood formally, was satisfied. The reports of the truth and reconciliation commissions of both Chile and South Africa, for example, were critical of the formalist understanding of the rule of law that they found to be widespread in their respective country. In the context of the application of measures of transitional justice, rule of law has to be understood in a way that coheres with an understanding of its ultimate aim, promoting a just social order, as well as with the more particular aims in terms of which transitional justice measures are specified, including recognition, trust and reconciliation, all of which are crucially concerned with the conditions under which individuals can reasonably consider themselves to be the holders of rights, and exercise that condition in the practice of raising claims against others, and particularly vis-à-vis State institutions.

45. Transitional justice measures in their context of origin were applied following regime change. Nevertheless, they were both an expression of, and contributed to, strengthening the successor regimes’ commitment to the rule of law. This was done not simply by distributing criminal punishments via procedurally fair trials when those could take place, but through the combination of the described measures. That combination was meant to give reasons to individuals to think of themselves as rights holders, free to organize themselves to, among other causes, make claims and establish that the violations that they had suffered would not remain without consequence. The operative rule of law here goes well beyond a purely juridical concept that can be reduced to regularity or consistency in the application of the law. It includes also the conditions under which individuals are guaranteed meaningful participation in processes of law-making through which they can give content to the notion of justice (not limited to their own redress).

46. In summary, the Special Rapporteur stresses that all of the four main goals of the mandate identified and elaborated on, contribute to what resolution 18/7 describes as “preventing the recurrence of crises and future violations of human rights, to ensure social cohesion, nation-building, ownership and inclusiveness at the national and local levels and to promote reconciliation”.

IV. Implementation strategy for the mandate

A. Strategic considerations

47. The strategy here outlined centres around three broad thematic areas that the Special Rapporteur considers to be critical for the strengthening and the development of the mandate. However, wanting to engage in meaningful consultations with stakeholders – States, national human rights institutions and civil society organizations alike – the three areas have been outlined very generally so that actions and outputs can be further specified taking into account the results of ongoing and future consultations.

48. Resolution 18/7 correctly insists on the importance of taking a comprehensive approach to the implementation of the four measures with which it is concerned. As discussed, the Special Rapporteur intends to contribute to the development of each of the four measures under the mandate, noting that they are the subject of very uneven development legally, practically and academically. However, in terms of thematic priorities, work on the linkages between the four different measures is particularly urgent. Chapter III sketches a normative argument that grounds the importance of a comprehensive approach to the implementation of the four measures. A significant amount of work, however, remains to be done on the ways in which the different measures can be designed and implemented so as to form part of a comprehensive whole.

49. As also discussed, there is sufficient empirical evidence about the drawbacks of disaggregating the four measures, of taking each of them to be completely independent from one another. But how, concretely, to link the measures with one another in a comprehensive and coherent approach to the issues, without simplification, requires much more examination. The end result has to be much more than a blue print that can be transferred from country to country. Rather, the result of these efforts has to take the shape of increased familiarity with the full range of options that different countries have tried in their own efforts to achieve this sort of integration and the development of innovative ideas of how this can be achieved in a way that is respectful of relevant experience and particular contextual factors, but also of the universality of the underlying obligations.

50. The second broad thematic area in the Special Rapporteur's strategic plan relates to the links not just between the four areas under the mandate but with broader areas of policy intervention, including development and security. The motivation for undertaking further work in this area should be plain: gross violations of human rights and serious violations of international humanitarian law are often fuelled by, and frequently leave in their wake, deep developmental deficits. Furthermore, these violations are not simply violations of civil and political rights, but include also violations of economic, social and cultural rights. There is therefore great pressure also coming from the field to demonstrate the effectiveness of the measures under the mandate both in redressing violations of economic, social and cultural rights and making contributions to improving the living conditions of individuals and communities previously affected by gross violations of human rights and serious violations of international humanitarian law. It is not that there is no pre-existing experience in this domain, but it has not been sufficiently systematized and neither the potential nor the limitations of the measures to attain these ends has been adequately identified. Furthermore, it is still the case that transitional justice practitioners pay little attention to the institutional and other developmental preconditions of the effective implementation of the measures they advocate and, most importantly, that development and security actors do a lot of their work in abstract from the justice-related obligations that are the subject of this mandate.

51. As if these were not sufficient reasons to explore the linkages between these areas, it should be clear that the promise of guaranteeing the non-recurrence of the violations which

are the subject of this mandate can turn into something more than a promise only provided that social and structural transformations that go beyond those that the implementation of the measures that the resolution refers to actually take place. Clarifying the ways in which the implementation of the truth, justice and reparations links with development and security concerns, and indeed the role they can play in development and security planning broadly conceived, can only contribute to the realization of guaranteeing the non-recurrence of violations.

52. While it is true that the effective transformation of the conditions frequently labelled as root causes of violence will surely require the coordination of various interventions, including those under the present mandate, it is also true that there is further work that can be done in order to maximize the impact and the sustainability of the measures at issue for this special procedure. Remarkably little systematic, comparative work has been done, for example, on the budgeting and planning dimensions of the implementation of the four different measures, notwithstanding the fact that they are no longer new. Even less systematic and comparative work has been done on the integration of these measures and their follow-up mechanisms on sectoral planning processes. But to the extent that we know that State institutions work on the basis of budgeting and planning, the desire to maximize the impact of the measures, especially over time, will depend on increasing the competency of those who work with the measures under this mandate on budgeting planning, and ways of integrating them into sectoral plans. Such competencies will have both ex ante and ex post benefits: ex ante – increased information and competency over these issues may act as a foil to the often almost reflex reactions on the part of some Governments to argue that they cannot afford these measures, a claim frequently belied by the absence of budgeting on their part and by increased spending in other areas, including arms; ex post – improved competency with budgeting and planning issues may help ameliorate the frequent lack of follow-up in the implementation of the measures under this mandate, including the "legacy challenges" of transitional criminal prosecutions (at the national and international levels)[27] and the lacklustre record of a number of Governments in executing the recommendations of truth commissions.

53. The third related area in which the Special Rapporteur considers that further work would be beneficial in the execution of the mandate is the significant challenge of increasing the effectiveness of the measures when implemented in post-conflict contexts and to redress abuses and violations that frequently take place in contexts where institutions are affected by various forms of weakness. The present report has already referred to some of the ways in which the transfer of the measures from post-authoritarian to post-conflict settings tests them (chap. III, sect. B, above). In a high number of post-conflict situations witnessed in the recent past, particularly those taking place in contexts of fragility, the number of victims can be astronomically high both in absolute terms and as a proportion of the population. The number of armed actors and agents of violence is significantly higher than in post-authoritarian conflicts; the challenges involved in making attributions of responsibility are greater; the resources and capacities available for establishing reparations programmes are lower; and institutions are less resilient and therefore more difficult to reform, especially in the short term, to mention only some of the most obvious factors and not counting the myriad of challenges that stem from frequent post-conflict malaise in terms of depleted infrastructure and financial resources, distorted economic relations, severe political mistrust and various kinds of social trauma. Serious thinking needs to be done about how to make the measures more effective even in the face of such factors.

[27] OHCHR Rule of Law Tool on Prosecution initiatives, pp 34–35. Available from www.ohchr.org/Documents/Publications/RuleoflawProsecutionsen.pdf.

B. Victim-centred approach

54. Resolution 18/7 requires the Special Rapporteur to "integrate a victim-centered approach throughout the work of the mandate", which he intends to do in an effective, hands-on manner. In addition to the requirement stated in the resolution, the Special Rapporteur hopes that the arguments offered above provide further motivation for doing so. First, the argument has emphasized that the implementation of the measures can be construed as having as their goals providing recognition to victims, fostering trust and strengthening the democratic rule of law. None of this can happen on the backs of victims, without their meaningful participation. Such meaningful participation can take different forms. To illustrate, truth-seeking requires the active participation of individuals who wish to express their grievances and report on the facts and underlying causes of the violations and abuses which occurred. Truth-seeking will only be regarded a justice measure if civil society, in particular victims organizations, is adequately represented in the composition of a truth commission. Prosecutions, for their part, can only serve as actual justice measures if the victims and their families are effectively involved in the processes and provided with the necessary information relevant to their participation in proceedings. Local or traditional methods of rendering justice, when compliant with international fair trial guarantees, can reach out to the local population so they recognize them as "justice". Reparations will only be successful if victims and civil society at large have been involved in the design of the schemes, so the measures are commensurate to the harm inflicted and contribute to the recognition of the victim as rights holders. Regarding guarantees of non-recurrence, institutional and personnel reform needs to have a firm grounding in the views of the population and specifically of the victims, who should be actively involved in the related processes so that legislation and institutions are built to prevent future violations and public officials selected in a manner in which the principle of the rule of law is given force.

55. Second, reconciliation is not to be conceived as a substitute for justice. In many parts of the world, reconciliation has been used by members of predecessor regimes as a demand for victims to forgive and forget and, therefore, as a way of placing one more burden on the victims. Third, one of the distinctive characteristics of a comprehensive approach is precisely that it places special emphasis on the centrality of victims; in addition to the progress that has been achieved of late in victim participation in criminal justice procedures, with the Rome Statute representing significant progress in this respect, truth commissions, especially but not exclusively those that follow the now well-entrenched trend to hold public hearings afford many opportunities to make victims visible, to give them a well-deserved space in the public sphere. Of all transitional justice measures, reparations programmes are designed to do something not just against perpetrators but on behalf of victims directly. Guarantees of non-recurrence, particularly some of the practical ways in which they are manifested, serve victims, for example, by sparing them the agony of having to deal with the same security officers that had abused them before.

56. Since a victim-centred approach is not merely a matter of argument but of practice, it must also be said that here that the systematization of experiences in dealing with participatory and consultation processes across the four measures under the mandate is one of the specific topics the Special Rapporteur intends to tackle throughout his term.

57. Finally, in operational terms, the Special Rapporteur has already initiated consultations with civil society organizations, including victims' organizations. He will certainly continue this in the more formal regional consultations that the Special Rapporteur is organizing and the country visits he will undertake under the mandate.

C. Integration of a gender perspective

58. Consistent with resolution 18/7, which calls for the Special Rapporteur to integrate a gender-sensitive approach throughout the work of the mandate and the victim-centred perspective just described,[28] sensitivity to the different ways in which gross violations of human rights and serious violations of international humanitarian law differently affect men, women, and children is a sine qua non of the successful implementation of the measures under the mandate. While in most situations in which the mandate will be relevant, most victims of disappearance (to cite one violation) and a majority of the combatants that take active part in conflict are male, the aftermath of the violations and of conflict mainly affect women and children, albeit differently. Furthermore, women and children are indeed the majority of victims of certain types of violations and of conflict, as manifested in the gender composition of most internally displaced populations and the distribution of many kinds of sexual and gender-based crimes.

59. Despite some progress in this area, significant challenges remain. These include the following. Establishing the sort of participatory procedures for the design and the implementation of the four different areas under the mandate that take account of the different needs and opportunities of men, women, and children. It must not be assumed that they will all be equally served by the same procedures. Beyond guaranteeing a voice to men, women, and children, processes should be designed that comply with the basic requirements of equality and fairness and lead to equitably differentiated outcomes, in accordance with the different needs and starting points of men, women, and children. Finally, it will be important to contribute to overcoming the tendency to think that with respect to the situations that are relevant for this mandate, adopting a gender perspective means only prioritizing sexual crimes in the case of female victims and thus ignoring other types of victimization to which women are exposed, underestimating the possibility that men can also be the victims of these very crimes and, to the extent that children are included as subjects of consideration, taking them exclusively in their role as passive dependents.

V. Conclusions and recommendations

60. **The report demonstrates the importance of adopting a comprehensive approach to address gross violations of human rights and serious violations of international humanitarian law, as stipulated by resolution 18/7. The Special Rapporteur considers that the comprehensive approach to questions of truth, justice, reparations and guarantees of non-recurrence can make a distinctive contribution to the realization of a broad catalogue of rights. He will therefore seek to coordinate efforts with related thematic and country mandates so as to maximize efficiency.**

61. **The Special Rapporteur takes the four components of the mandate as a set of measures that are related to and can reinforce one another, implemented to redress the legacies of gross violations of human rights and serious violations of international humanitarian law. Such redress primarily means giving force to the violated norms. The Special Rapporteur emphasizes that the four elements under the mandate and the specific measures to which the resolution refers rest on established rights and**

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[28] See, e.g., Ruth Rubio-Marín and Pablo de Greiff, "Women and Reparations", *The International Journal for Transitional Justice*, vol. 1, No. 3 (2006).

obligations and are meant to give expression thereto. They are not simply a matter of empathy, charity or expedience.

62. **The mandate will need to pay special attention to the ways in which these four different elements go together, not just in theory but in practice. In addition to the intention to achieve the sort of synergies mentioned in chapter III of the present report and minimize potential conflicts between them, the Special Rapporteur also considers it essential to stem a tendency on the part of some States to trade off one measure against others.**

63. **Despite growing international experience with the four measures under the mandate, it must be acknowledged that: (a) not all measures are equally developed legally, practically or even conceptually; (b) the development, particularly in practice, of comprehensive approaches to address gross violations of human rights and serious violations of international humanitarian law requires more systematic work; (c) the sustainability of the impact of these measures, even when comprehensively implemented, could be enhanced by strengthening of links with other types of interventions, including development and security policies; and (d) increasing the effectiveness of the measures, particularly in post-conflict settings is a matter of urgency. These themes will be developed by the Special Rapporteur in future reports.**

64. **The four measures under the mandate can be conceptualized as assisting in the pursuit of two mediate goals – providing recognition to victims and fostering trust – and two final goals – contributing to reconciliation and strengthening of the rule of law. To provide recognition to victims, it is important but not sufficient to acknowledge victims' suffering and their capacity to endure. It is fundamental to recognize that the victim is the holder of rights. This entails not only seeking avenues of redress that can assuage suffering but also restoring the victim's rights and affirm her/his standing as someone who is entitled to make claims, on the basis of rights.**

65. **Measures under the mandate seek to contribute to both trust between individuals and trust of the individuals in State institutions. Trust involves an expectation of a shared normative commitment and, therefore, develops out of a mutual sense of commitment to these shared norms and values. Specifically, trusting an institution amounts to knowing that its constitutive rules, values and norms are shared by its members or participants and are regarded by them as binding. Both recognition and trust are preconditions and consequences of justice.**

66. **The Special Rapporteur emphasizes that reconciliation is an end that is conceived as flowing from the comprehensive implementation of the four measures under the mandate. Reconciliation should not be conceived either as an alternative to justice or an aim that can be achieved independently of the implementation of the comprehensive approach. Reconciliation is, at minimum, the condition under which individuals can trust one another as equal rights holders again or anew. That means that individuals are: (a) sufficiently committed to the norms and values that motivate their ruling institutions, (b) sufficiently confident that those who operate those institutions do so on the basis of those norms and values – including the norms that turn individuals into right holders – and (c) sufficiently secure about other individuals' commitment to abide by and uphold these basic norms and values.**

67. **The concept of the rule of law to which this mandate seeks to contribute is not a purely formalist notion. Rule of law has to be understood in a way that coheres with an understanding of its ultimate aim – promoting a just social order – and the more particular aims in terms of which transitional justice measures are specified, including recognition, trust, and reconciliation. The combination of measures is meant to give reasons for individuals to think of themselves as rights holders, free to organize**

themselves to make claims and establish that the violations that they had suffered would not remain without consequence. It also plays a strong catalytic role in the process of civil society organization. The concept of the rule of law also includes the conditions under which individuals and civil society at large are guaranteed meaningful participation in processes of law-making, through which they can give content to the notion of justice.

68. **None of the proclaimed goals of the measures under the mandate can happen effectively with victims as the key without their meaningful participation. To ensure that reconciliation is not to be conceived as a substitute for justice, the mandate places special emphasis on the centrality of victims. The systematization of experiences in dealing with participatory and consultation processes across the four measures under the mandate is one of the topics the Special Rapporteur intends to tackle throughout his term.**

69. **Sensitivity to the different ways in which gross violations of human rights and serious violations of international humanitarian law affect, differently, men, women, and children is a sine qua non of the successful implementation of the measures under the mandate. The main issues the mandate will have to tackle include establishing the sort of participatory procedures for the design and implementation of the four different areas under the mandate that take into account different needs and opportunities of men, women, and children.**