



General Assembly

Distr.: General
18 July 2024

Original: English

Seventy-ninth session

Item 71 (b) of the provisional agenda*

Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Promotion of truth, justice, reparation and guarantees of non-recurrence

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Bernard Duhaime, in accordance with Human Rights Council resolutions [18/7](#) and [54/8](#).

* [A/79/150](#).



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

Summary

In the present report, the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Bernard Duhaime, provides an overview of his approach to the mandate, as well as a preliminary outline of areas of engagement during his tenure and of issues to be addressed in future reports to the General Assembly.

I. Introduction¹

1. On 29 September 2011, the Human Rights Council adopted resolution 18/7, in which it decided to appoint, for a period of three years, a Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence. In 2023, the Human Rights Council adopted its resolution 54/8, by which it extended the mandate of the Special Rapporteur for a further period of three years. The current Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Bernard Duhaime, was appointed on 5 April 2024 by the Human Rights Council during its fifty-fifth session, and took up functions on 1 May.

2. As established in those resolutions, the Special Rapporteur will focus on situations of transition from conflict or authoritarian rule where there have been gross violations of human rights and serious violations of international humanitarian law. He will assess the measures adopted by the relevant authorities to guarantee truth, justice, reparation, memory and guarantees of non-recurrence, with the aim to, among others: ensure accountability and serve justice; promote truth and memory about past violations; provide remedies to victims; reform the national institutional and legal framework to promote the rule of law in accordance with international human rights law and restore confidence in the institutions of the State; ensure social cohesion, nation-building, ownership and inclusiveness at the national and local levels; promote healing and reconciliation; and prevent the recurrence of crises and future violations of human rights.

3. In his report (A/HRC/57/50) submitted to the Human Rights Council pursuant to resolution 54/8, the Special Rapporteur listed the key activities undertaken by the previous mandate holder from June 2023 to April 2024, and his own activities conducted in May 2024, including summaries of communications and completed and requested country visits. He also provided an overview of his approach to the mandate and a preliminary outline of areas of interest, particularly his main lines of engagement with the Council.

4. In the present report, submitted to the General Assembly also pursuant to resolution 54/8, the Special Rapporteur provides an overview of his approach to the mandate, as well as a preliminary outline of areas of interest for issues to be addressed in future reports to the Third Committee of the General Assembly.

II. Approach of the current mandate holder

5. The Special Rapporteur acknowledges and builds upon the efforts of his predecessor, Fabián Salvioli, to advance victim-centred approaches grounded in international legal principles. Emphasizing gender perspectives and input from historically marginalized groups, the Special Rapporteur aims to refine transitional justice concepts and guidance in the fields of truth, justice, reparation, guarantees of non-recurrence and memorialization, and integrate them comprehensively across United Nations agendas.

6. To achieve these objectives, in addition to reviewing current transitional justice literature and developments in relevant jurisprudence, legislation, policies, regulations and normative frameworks at the national, regional and international levels, the Special Rapporteur will also issue calls for input and engage in open dialogue with a range of actors in the field, including Member States, international and regional institutions, treaty bodies and the special procedure mandate holders of

¹ The academic assistance of Skylar Gleason and Myriam Pigeon in preparing the present report is acknowledged with gratitude.

the Human Rights Council, national human rights bodies, civil society organizations, representatives of victims, scholars and practitioners. When the opportunity arises, the Special Rapporteur intends to open these conversations up to a broader audience and further expand the exchange of ideas in the transitional justice field through the organization of public events.

7. The Special Rapporteur will analyse the input from these various actors and address the themes that arise in his annual reports to the General Assembly and the Human Rights Council. In reporting to the Council, he intends to focus on transversal transitional justice issues of a legal, methodological, procedural and technical nature, which can inform States, as well as United Nations experts and bodies. In reporting to the Assembly, he aims to highlight some of the major substantive and policy issues in transitional justice that have an impact on the international state of human rights, the rule of law, development, as well as peace and security.

8. In the following section, the Special Rapporteur identifies numerous themes that he intends to prioritize in pursuit of the effective implementation of his mandate. However, he will approach the mandate in an open-ended manner. As the understanding of transitional justice and human rights obligations continue to evolve through new research, jurisprudence, international treaties, domestic policies and practice in the field, the Special Rapporteur will monitor such developments, progressively amend the recommended practices across all five pillars of the mandate and adjust the identified priorities as necessary. These updates will be pursued with the intention of creating approaches to transitional justice that are responsive to modern global crises and inclusive of and accessible to all affected communities.

9. The Special Rapporteur will further aim to expand the perceived relevance and application of transitional justice policies to contexts beyond initiated transitions, promoting the use of transitional justice strategies and mechanisms in emerging transitional contexts, such as negotiations for a possible transition in ongoing conflicts or authoritarian regimes. Such earlier implementation is intended to embed transitional justice perspectives in transitional processes from the beginning, to ensure timely documentation of ongoing human rights and humanitarian law violations and to assist in the prevention of future abuses. He will also explore the ways in which transitional justice approaches and tools can be utilized to meet major contemporary human rights challenges relevant to the mandate, in addition to those traditionally arising under armed conflict and authoritarian rule contexts. Implementing a more temporally and substantively comprehensive approach will better align transitional justice efforts with the pillars and agenda of the United Nations.

III. Preliminary outline of areas of interest to the current mandate holder

10. In conducting the general duties described above and in his mandate, the Special Rapporteur intends to support the three core objectives of transitional justice identified by the Secretary-General in 2023: (a) promoting transitional justice as a pragmatic human rights-based policy tool at the disposal of national stakeholders that is relevant to enhancing peace and security, human rights and accountability, and sustainable development, and therefore as a strategically important and cross-cutting policy area relevant to the entire Organization; (b) achieving greater innovation in the design and implementation of the Organization's transitional justice work in support of national stakeholders; and (c) contributing to a tangible and transformational

impact for people and communities.² To advance these objectives, the Special Rapporteur has identified and intends to prioritize some of the below preliminary areas of interest. While they are described as either (a) substantive and policy issues in transitional justice that affect the international state of human rights, rule of law, development, as well as peace and security, or (b) transversal transitional justice issues of a legal, methodological, procedural and technical nature, the Special Rapporteur may later address some of these topics under alternative categories.

A. Substantive areas of interest

11. The Special Rapporteur plans to address multiple substantive and policy-related issues that concern a large scope of States and stakeholders, which he intends to explore in the reports presented annually at the Third Committee of the General Assembly. Notably, for the five coming reporting cycles, the following preliminary areas of interest have been identified: (a) economic, social and cultural rights in the context of transitional justice; (b) transitional justice responses to mass human rights violations, including: (i) terrorism and counterterrorism; (ii) mass displacement and migration; (iii) climate change and environmental harms; and (iv) corruption and organized crime; (c) challenges of negationism, revisionism and politicization in transitional justice contexts; (d) transnational transitional justice, including following contexts of international armed conflicts; and (e) implementation of transitional justice in early stages of transition.

1. Economic, social and cultural rights in the context of transitional justice

12. Following the 2010 guidance note on the United Nations approach to transitional justice, transitional justice processes and mechanisms should incorporate economic, social and cultural rights in their endeavours.³ A broader conception of justice needs to be prioritized in order to address not only the violations of economic, social and cultural rights resulting from conflict or repression, but also the structural problems acting as root causes of conflict or violence within a State.

13. Many conflicts do indeed arise from a context of social and economic inequalities. However, traditional justice mechanisms are generally not intended to address the underlying causes of conflict, but rather to address specific violations.⁴ While truth commissions should be effective platforms to address these issues as they examine the causes and consequences of gross human rights violations, most have focused on civil and political rights.⁵

14. Societies with a history of exclusion, racism and/or oppressive regimes also often face profound divisions, making it challenging to find a fair way to address past crimes.⁶ Understanding the context and taking into account previous violations of economic, social and cultural rights leading to violence is fundamental in order to restore truth, assure sustainable peace and prevent recurrence.

15. On the basis of the previous mandate holder's report (A/77/162) linking transitional justice to the Sustainable Development Goals, the Special Rapporteur underlines the relevance of people-centred transitional justice processes in the

² See www.ohchr.org/sites/default/files/documents/issues/transitionaljustice/sg-guidance-note/2023_07_guidance_note_transitional_justice_en.pdf, p. 3.

³ See www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/TJ_Guidance_Note_March_2010FINAL.pdf, guiding principle 9.

⁴ www.ohchr.org/sites/default/files/Documents/Publications/HR-PUB-13-05.pdf, p. 55.

⁵ www.ohchr.org/sites/default/files/Documents/Publications/HR-PUB-13-05.pdf, p. 17.

⁶ www.researchgate.net/publication/343887533_Economic_Social_and_Cultural_Rights_in_the_Transitional_Justice_Remmit, pp. 66–67.

sustainable development agenda. Transitional justice and the Sustainable Development Goals share a common aim: addressing the root causes of violence and human rights violations, which are often grounded in inequality, marginalization, discrimination and impunity, with a view to preventing their recurrence and promoting sustainable peace. Goal 16 clearly articulates aspirations and suggested action in the areas of peace, inclusion, development and justice to achieve this aim. On the other hand, transitional justice has an inbuilt focus on promoting justice, addressing social grievances and preventing violence. Comprehensive approaches to transitional justice tackle the relationship between past, present and future, and, in doing so, can provide effective responses to unlock systemic issues by both looking at the symptoms of crisis and conflict and addressing their underlying determinants, including unequal access to economic, social and cultural rights. Moreover, transitional justice's outlook on victim- and people-centred approaches can help foster more inclusive and equal societies, thus enabling more sustainable development and peacebuilding. Similarly, the potential of transitional justice's interventions in the field of reparation, particularly when these are designed to uproot systemic structures affecting victims (including through the redistribution of socioeconomic resources and societal roles) can have durable impacts on justice, development and peace.⁷ By addressing economic, social and cultural rights issues infringing on the population's development, transitional justice processes could better contribute to prevention.⁸

16. Furthermore, it is essential to investigate thoroughly and repair violations of economic, social and cultural rights that occur during conflict or in violent contexts.⁹ Economic, social and cultural rights have been historically neglected, as they have often been seen as entitlements and aspirational goals that do not impose legally binding obligations to States.¹⁰ In addition, since these rights are sometimes not considered justiciable, they may not result in judicial or quasi-judicial action in certain jurisdictions. However, States have an obligation to respect, protect and fulfil these rights. Economic, social and cultural rights and civil and political rights are interdependent, indivisible and complementary, thereby underscoring their equal significance in transitional justice processes.

17. In transitional justice contexts, violations of economic, social and cultural rights have far-reaching effects and require comprehensive, and in many occasions transformative, reparations. However, even in instances where mechanisms have investigated such violations, their recommendations for reparations are often inadequate. For instance, despite investigations into these violations, the Timor-Leste Commission chose to exclude victims of economic, social and cultural rights violations from the reparations programme, citing reasons of "feasibility and needs-based prioritization".¹¹

18. Since the full restitution for violations of economic, social and cultural rights is often difficult, rehabilitation services, such as medical and psychological care, along with social support services, are often prioritized.¹² Educational, employment and housing programmes are also essential for sustaining the victims' families and have been prioritized in certain transitional contexts. For instance, in Bosnia and Herzegovina, as part of its peace agreement plan, the Government worked on the reconstruction of the housing units of returnees and refugees, as well as the

⁷ A/77/162, paras. 7, 10 and 15.

⁸ Ibid., para. 36.

⁹ See www.ohchr.org/sites/default/files/Documents/Publications/HR-PUB-13-05.pdf, p. 6.

¹⁰ See <https://nyujilp.org/wp-content/uploads/2013/02/40.1-Arbour.pdf>, p. 11.

¹¹ Ibid., p. 13.

¹² A/HRC/54/24, para. 50.

reconstruction of communal and social infrastructure.¹³ The University of El Salvador has facilitated the admittance of a significant number of family members of the victims of the El Mozote massacre into its programmes.¹⁴ In Finland, in recognition of the harm inflicted through assimilation policies on older and younger generations of Sámi people, a psychosocial rehabilitation unit provides online support across the country to all community members.¹⁵

19. Furthermore, reparations may also include the restitution of land, enhancements to public services and the restoration of religious and cultural sites. In Colombia, for instance, land restitution is one of the pillars of the transitional justice strategy adopted to grapple with the legacy of the conflict. Albeit insufficiently implemented, partly owing to the persistence of conflict in certain territories, the process of land restitution features a complex administrative and judicial infrastructure for the registration and processing of requests from displaced and disposed victims.¹⁶

20. However, the provision of collective reparations in the sphere of economic, social and cultural rights can prompt significant concerns, as they frequently encompass obligations that States are already expected to fulfil regardless of the transitional justice process.¹⁷ These responsibilities typically pertain to education, health care and infrastructure. For example, in Peru, the truth commission integral reparations programme recommended building a hospital, which sparked controversy because providing health care is a State obligation regardless of the transitional justice context.¹⁸ Thus, collective reparations cannot substitute social programmes but should rather complement and support existing responsibilities.¹⁹ The mandate holder has consistently warned against portraying broader development measures as alleged reparations. As stressed before, development programmes are not reparation programmes and should not be construed as such, as they neither target victims specifically, nor do they entail an acknowledgement of the harm suffered by victims or of the responsibilities involved in committing that harm. Indeed, the aim of development aid is to satisfy basic and urgent needs to which beneficiaries have a right as citizens, not necessarily as victims; consequently they must be substantially and programmatically differentiated from reparations.²⁰ While reparations should not be assimilated to development aid, reparation programmes can complement or intersect with development programmes, especially in transitional contexts where countries are strained by conflict and poverty, and struggle to satisfy the basic needs of citizens and victims. As stressed by the former Special Rapporteur, both can be done concurrently, but must not be subsumed into one another, and must be timed and sequenced in ways that complement each other, for example, through collective or community reparation schemes or through development programmes that can make use of information about victims and their needs stemming from the reports of truth commission and from reparations registries.²¹ While collective reparations can include development-oriented services, they cannot be substituted by them and should

¹³ A/HRC/51/34/Add.2, para. 64.

¹⁴ A/HRC/45/45/Add.2, para. 50.

¹⁵ See www.ohchr.org/en/press-releases/2024/03/finland-must-address-legacy-human-rights-violations-against-sami-people-says.

¹⁶ For more information on this programme, see A/HRC/57/50/Add.1.

¹⁷ See https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2746750#:~:text=Sam%20Szoke%20Burke,-Columbia%20Center%20on&text=Transitional%20justice%20programs%20traditionally%20focused,of%20'background'%20or%20context, p. 486.

¹⁸ See www.ictj.org/sites/default/files/ICTJ_Report_Peru_Reparations_2013.pdf, p. 13.

¹⁹ See www.corteidh.or.cr/tablas/r32681.pdf, p. 119.

²⁰ A/76/180, para. 60; and A/78/181, para. 85.

²¹ A/78/181, para. 86.

be combined with other forms of reparation, such as compensation, restitution and satisfaction.²²

21. In this context, the Special Rapporteur intends to conduct a study and work on a comprehensive strategy that incorporates and highlights economic, social and cultural rights in transitional justice processes.

2. Transitional justice responses to mass human rights violations

22. The mandate of the Special Rapporteur focuses strongly on addressing gross human rights violations and serious violations of international humanitarian law in societies that have transitioned from armed conflict and authoritarian rule. Within these spheres, transitional justice has not adequately addressed certain human rights violations committed on a mass scale. Such is the case of the human rights violations arising out of terrorism and counterterrorism, which play an extensive role in contemporary armed conflict. Similarly, the field has also yet to comprehensively respond to instances of mass displacement and migration, environmental crimes, corruption and organized crimes, which all lead to large-scale human rights abuses. For transitional justice to be as effective as possible, these issues need to be more fully integrated into the design and implementation of transitional justice measures.

23. Importantly, the Special Rapporteur recognizes that these phenomena create similarly massive and grave violations of human rights outside of armed conflict and authoritarian rule, and believes transitional justice has important tools, policies and lessons to offer to approach them comprehensively. Notably, similar large-scale violations have already been examined under the mandate, such as colonial legacies and assimilationist policies.²³

24. These various phenomena cause extensive suffering in the present and threaten to fuel cycles of violence, meaning that fulfilling the preventative aims of transitional justice demands processes that adequately address them. Therefore, the Special Rapporteur intends to examine how courts and tribunals, truth-seeking commissions, reparations programmes, institutional reforms and other transitional justice mechanisms could be implemented to respond to these challenges, in both traditional transitional settings in the wake of armed conflict and authoritarian rule, and in non-traditional contexts.

Terrorism and counterterrorism

25. In 2023, deaths from terrorism rose 22 per cent despite a drop in the number of attacks, with the epicentre of activity shifting in recent years from the Middle East to the Sahel region of Africa.²⁴ In addition to deaths, terrorist activity entails other grave human rights violations that mirror those seen in traditional transitional justice contexts, such as disappearances, detention, sexual violence, torture and forced displacement – often linked to discrimination – as well as increased societal instability and potentially weakened governance and institutions. These violations often rise to the level of international crimes, including crimes against humanity and war crimes;²⁵ in Iraq, the crimes of Da'esh have even been legally recognized as constituting genocide.²⁶ Although terrorism can occur during peacetime, nearly all of

²² A/77/162, p. 14.

²³ See A/76/180; www.ohchr.org/en/press-releases/2024/03/sweden-un-expert-calls-transitional-justice-measures-address-legacy; and www.ohchr.org/en/press-releases/2024/03/finland-must-address-legacy-human-rights-violations-against-sami-people-says.

²⁴ See www.visionofhumanity.org/wp-content/uploads/2024/02/GTI-2024-web-290224.pdf, p. 4.

²⁵ See www.ohchr.org/sites/default/files/documents/issues/transitionaljustice/sg-guidance-note/7th-tj-ct.pdf, p. 8.

²⁶ See <https://press.un.org/en/2023/gashc4382.doc.htm>.

grave human rights and humanitarian law violations resulting from terrorist activity and counterterrorism operations. Accordingly, the Special Rapporteur intends to develop recommendations for how transitional justice tools, including criminal accountability, reparations, truth-seeking bodies, reintegration practices, memorials and institutional reform, can be leveraged most effectively in response to massive human rights and humanitarian violations resulting, particularly from terrorism and counterterrorism. This process will also account for the specific challenges posed in applying a transitional justice approach to terrorism and counterterrorism, such as the stigma attached to former members of terrorist organizations⁴⁰ and lack of international legal clarity created by the State obligation under Security Council resolution 1373 (2001) to criminalize terrorism without the provision of a definition of terrorism.⁴¹

Mass displacement and migration

29. As of mid-2024, the Office of the United Nations High Commissioner for Refugees reported that there were over 117 million forcibly displaced persons worldwide, a number that has risen greatly since 2000.⁴² Of the forcibly displaced people classified as refugees, nearly three-quarters are from just five countries: Afghanistan, the Syrian Arab Republic, Venezuela (Bolivarian Republic of), Ukraine and South Sudan – all of which are sites of grave human rights and/or humanitarian law violations that would fall under the mandate. Similarly, the number of migrants⁴³ overall has increased significantly, nearly doubling from 1990 to now include roughly 281 million people.⁴⁴

30. Mass displacement and migration isolate those affected from the political and social context and often lead to exclusion from peace and accountability processes.⁴⁵ Affected populations may have critical information about the nature and scope of the violations that occurred in an armed conflict or under an authoritarian regime, including accounts of the experiences that led them to flee. Accordingly, their inclusion in transitional justice proceedings is essential to understand and repair the full extent of the harms committed. Additionally, even migrants leaving their countries for other reasons, such as socioeconomic conditions and climate change, endure serious human rights violations during the migration process, including unlawful killings⁴⁶ and enforced disappearance.⁴⁷ Upon arrival in a new country, they often face restrictive policies and widespread discrimination, at times escalating to physical violence.⁴⁸ The gravity, prevalence and systemic nature of the abuses perpetrated against migrants merit close consideration by the mandate holder to see how transitional justice policies and tools can be useful in responding to them.

31. Migrants and forcibly displaced persons also have unique challenges that should be addressed, such as a desire to return to their place of origin, reunification of families and discrimination and difficulty exercising their rights abroad. However,

⁴⁰ See A/77/345.

⁴¹ See www.ohchr.org/sites/default/files/documents/issues/transitionaljustice/sg-guidance-note/7th-tj-ct.pdf, pp. 13–14.

⁴² This number includes refugees, asylum-seekers, internally displaced people and “other people in need of international protection.” See www.unhcr.org/refugee-statistics/.

⁴³ Although there is not a formal definition, the United Nations, in line with the majority of experts, understands an “international migrant” to be a “someone who changes his or her country of usual residence, irrespective of the reason for migration or legal status.”

See <https://refugeesmigrants.un.org/definitions>.

⁴⁴ See <https://worldmigrationreport.iom.int/msite/wmr-2024-interactive>.

⁴⁵ See www.ictj.org/sites/default/files/ICTJ-Research-Brief-Displacement-Gender-Hovil.pdf, p. 1.

⁴⁶ See A/72/335.

⁴⁷ See A/HRC/36/39/Add.2.

⁴⁸ See www.hrw.org/legacy/campaigns/race/refugeepresskit.html.

forcibly displaced people and migrant communities may be unwilling or unable to physically travel to participate in trials, truth-seeking processes and reparations programmes owing to persisting fear, medical needs, lack of resources and other obstacles.⁴⁹ These challenges create gaps in transitional justice processes where there is immense need. The Special Rapporteur on the human rights of internally displaced persons, for example, has stressed that the pillars of transitional justice are essential to responding to human rights abuses faced by internally displaced persons and to supporting durable solutions,⁵⁰ as have civil society actors.⁵¹

32. Although previous mandate holders have acknowledged that displaced persons and migrants require specialized transitional justice measures – specific reparations programmes and the establishment of legal identity, for example⁵² – and have addressed it in country visit reports,⁵³ there has yet to be a comprehensive assessment under the mandate of how transitional justice should respond to displacement and engage displaced populations, including those no longer in the country. Nevertheless, transitional justice processes, including in Colombia, Guatemala, Kenya, Liberia, Sierra Leone and Timor-Leste, have investigated issues of displacement, demonstrating the need for more attention on the matter.⁵⁴

33. The Special Rapporteur therefore intends to build on the existing work regarding migrants and forcibly displaced persons with the aim of making transitional justice more comprehensive and accessible to all victims. His work will also include an examination of how the transitional justice field can inform efforts to address serious human rights violations suffered by all forms of migrants during the migration and settlement process, regardless of whether those migrants are fleeing country situations traditionally handled under the mandate.

Climate change and environmental harms

34. As climate change worsens and humanity continues to engage in environmentally destructive and extractive action,⁵⁵ the demand for stronger responses to environmental harms has increased.⁵⁶ These harms occur in both conflict and peacetime and come in many forms, including displacement, dispossession, increased food insecurity, public health crises, greater socioeconomic inequality, loss of important cultural sites and targeted violence and intimidation campaigns against human rights defenders seeking to protect natural spaces.⁵⁷ Like so many in other transitional justice contexts, these issues disproportionately affect marginalized populations, including women, children and Indigenous communities,⁵⁸ with close ties to colonial structures.⁵⁹ Notably, the perpetration of environmental harms is often

⁴⁹ See [A/HRC/36/39/ADD.2](#).

⁵⁰ See [A/73/173](#).

⁵¹ See www.ictj.org/our-work/research/transitional-justice-and-displacement.

⁵² See [A/HRC/54/24](#); [A/HRC/36/50](#); and [A/HRC/42/45](#).

⁵³ See [A/HRC/57/50/Add.2](#); [A/HRC/51/34/Add.2](#); [A/HRC/51/34/Add.1](#); and [A/HRC/54/24/Add.2](#).

⁵⁴ [A/73/173](#), para. 38.

⁵⁵ For the general worsening state of global climate change, see www.ipcc.ch/report/ar6/syr/downloads/report/IPCC_AR6_SYR_SPM.pdf.

⁵⁶ For the proposal of the codification of the new international crime of ecocide, see <https://static1.squarespace.com/static/5ca2608ab914493c64ef1f6d/t/60d7479cf8e7e5461534dd07/1624721314430/SE+Foundation+Commentary+and+core+text+revised+%281%29.pdf>.

⁵⁷ See www.ohchr.org/en/stories/2022/03/environmental-human-rights-defenders-must-be-heard-and-protected.

⁵⁸ See <https://academic.oup.com/ijtj/article/17/2/185/7230546>, p. 3.

⁵⁹ See [A/76/180](#).

not limited to State actors, but extends to criminal organizations,⁶⁰ terrorist groups⁶¹ and corporations.⁶²

35. The previous mandate holder, as well as the former Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, acknowledged that climate change and environmental degradation, in addition to causing human rights harms of their own, are closely linked to mass violence as both causes and consequences.⁶³ He also highlighted Colombia as a positive example of a State thinking creatively about how to incorporate environmental harms into transitional justice through the decision by the Special Jurisdiction to designate Indigenous peoples and Afrodescendent territories as victims of the conflict.⁶⁴

36. In practice, however, transitional justice has generally overlooked issues relating to the natural world, reinforcing structural inequalities and paving the way for continued environmental harms.⁶⁵ Most work on the intersection of transitional justice and the environment has been done by scholars and civil society experts. These groups and individuals have asserted that transitional justice policies could support efforts to prevent and redress environmental harms and climate change,⁶⁶ especially given that responses to address a crisis of this scale are unlikely to succeed without dealing with the power structures and historical inequalities that helped create it.⁶⁷ Some experts have asserted that the inclusion of environmental crimes in transitional justice could also help overcome critiques of the field as being neocolonialist and failing to address socioeconomic inequalities.⁶⁸

37. The Special Rapporteur therefore intends to expand on this existing work in two ways. First, he will assess how transitional justice mechanisms can better address environmental harms that arise in armed conflicts and under authoritarian regimes, including through more eco-centric,⁶⁹ restorative legal responses and reparations programmes. This assessment will include consideration of how post-transition institutional reforms can support just transition to a sustainable, low-carbon society.⁷⁰ Second, the Special Rapporteur will work with academic and civil society experts to develop strategies for the application of transitional justice tools to climate change and destructive environmental practices in peacetime.

⁶⁰ See www.unodc.org/documents/toc/factsheets/TOC12_fs_environment_EN_Plain.pdf.

⁶¹ See www.visionofhumanity.org/wp-content/uploads/2024/02/GTI-2024-web-290224.pdf, p. 62.

⁶² A/HRC/51/34.

⁶³ See A/77/162; and A/74/161.

⁶⁴ A/HRC/51/34; see also www.springerprofessional.de/en/the-palgrave-handbook-of-environmental-restorative-justice/23512480.

⁶⁵ See <https://digitalcommons.usf.edu/gsp/vol16/iss1/5/>, p. 18.

⁶⁶ <https://academic.oup.com/book/26778/chapter/195701753>, p. 120; <https://gijtr.org/new-trends-in-transitional-justice-blog/integrating-climate-change-and-transitional-justice/>; and [https://berghof-foundation.org/news/dialogue-between-transitional-justice-and-climate-justice#:~:text=Jasmina%20Brankovic%20\(CSVR\)%20highlighted%20the,better%20future%20with%20fewer%20harms%E2%80%9D](https://berghof-foundation.org/news/dialogue-between-transitional-justice-and-climate-justice#:~:text=Jasmina%20Brankovic%20(CSVR)%20highlighted%20the,better%20future%20with%20fewer%20harms%E2%80%9D).

⁶⁷ See <https://academic.oup.com/ijtj/article/17/2/185/7230546>, p. 1.

⁶⁸ See <https://digitalcommons.usf.edu/gsp/vol16/iss1/5/>, p. 28.

⁶⁹ For a description of an ecocentric approach opposed to the Western-derived, anthropocentric one, see <https://www.semanticscholar.org/paper/Transitional-Justice-and-Ecological-Jurisprudence-Pelizzon/b57273fbb9d92aa1f2e75c8dd4d228f9bb4496e6>, p. 317.

⁷⁰ A just transition, broadly defined as ensuring that no one is left behind or pushed behind in the transition to low-carbon and environmentally sustainable economies and societies, can enable more ambitious climate action and provide an impetus to attaining the Sustainable Development Goals. See www.un.org/development/desa/dpad/wp-content/uploads/sites/45/CDP-excerpt-2023-1.pdf.

Corruption and organized crime

38. Corruption generally fuels violence.⁷¹ In many pre-transitional contexts, be it armed conflict or authoritarianism, corruption is part of the very structures that engendered or facilitated the commission of gross human rights violations. In such cases, corruption must be addressed by relevant transitional justice mechanisms searching for the truth, reforming corrupt institutions and bringing offenders to justice. Furthermore, as highlighted previously under the mandate, transitional justice is often taking place in contexts with weak institutions,⁷² where corruption can go unchecked. Existing or new forms of corruption can undermine the effective implementation of transitional justice processes, including by stripping societies of critical resources necessary for development,⁷³ reducing trust in governance, exacerbating discrimination and inequality⁷⁴ and threatening the legitimacy of systems involved in that implementation, such as the judiciary.⁷⁵ Accordingly, the Secretary-General's 2023 guidance note on transitional justice includes overcoming corruption as one of the transformational aims of transitional justice.⁷⁶

39. The previous mandate holders emphasized the role that corruption plays in exacerbating mass violence and undermining transitional justice,⁷⁷ with a specific focus on how corruption impairs reparation programmes.⁷⁸ Their country visit reports have also assessed how transitional justice measures have succeeded in addressing existing corruption and preventing its recurrence.⁷⁹ Experts have reaffirmed corruption's destructive capacity and "mutually reinforcing" relationship with human rights abuses, and thus encouraged transitional justice policies to address it more directly to combat impunity and prevent the recurrence of violence.⁸⁰ Notably, more fully incorporating anti-corruption aims and policies into transitional justice offers the opportunity to take a more victim-centred approach than traditional anti-corruption methods, which tend to focus on the perpetrator.⁸¹ Some transitional justice mechanisms, such as the Truth and Dignity Commission in Tunisia,⁸² include corruption in their mandates, but there is no consensus for such inclusion, nor how it should be implemented in practice. Important questions remain about how existing anti-corruption mechanisms can be integrated into transitional justice processes⁸³ and how such processes can reach external actors that facilitate corruption, such as banks and corporations in the global North.⁸⁴

40. Furthermore, corruption often provides fuel for the proliferation of organized crime by shielding participating groups from law enforcement and granting these groups influence over the political, social and economic state of a society, generally

⁷¹ See [www.usip.org/sites/default/files/Amanda%20Mayoral/Daniel%20Serwer%20PIP%20Corruption%20\(00019552\).PDF](https://www.usip.org/sites/default/files/Amanda%20Mayoral/Daniel%20Serwer%20PIP%20Corruption%20(00019552).PDF).

⁷² See A/HRC/36/50.

⁷³ See https://brill.com/view/journals/nord/88/3/article-p359_359.xml?language=en, p. 385.

⁷⁴ See <https://uncaccoalition.org/the-need-for-a-un-special-rapporteur-on-corruption-and-human-rights/>.

⁷⁵ See A/67/305.

⁷⁶ See www.ohchr.org/sites/default/files/documents/issues/transitionaljustice/sg-guidance-note/2023_07_guidance_note_transitional_justice_en.pdf, p. 9.

⁷⁷ See A/HRC/39/53.

⁷⁸ See A/78/181.

⁷⁹ See A/HRC/24/42/Add.1; A/HRC/48/60/Add.1; and A/HRC/57/50/Add.2.

⁸⁰ See www.ictj.org/sites/default/files/IJTJ-Global-Justice-Corruption-2008-English.pdf, p. 310.

⁸¹ A/HRC/32/22, para. 130.

⁸² See A/78/181.

⁸³ See www.academia.edu/40701828/The_New_Zimbabwean_Governments_War_on_Corruption_A_Lesson_for_Anti_Corruption_and_Transitional_Justice_Scholars_and_Practitioners.

⁸⁴ See <https://academic.oup.com/british-academy-scholarship-online/book/42530/chapter/356843404>, pp. 252–255.

increasing poverty and undermining sustainable development owing to the misuse of public funds.⁸⁵ Organized crime acts as an insidious, exacerbating factor for instability and impunity, as well as many of the challenges described above. Like corruption, it often flourishes in conflict and authoritarian environments, as demonstrated by Security Council engagement on the topic in relation to States such as Afghanistan and the Democratic Republic of the Congo. It can support cycles of violence in these contexts through activities such as drug and firearms trafficking,⁸⁶ the creation of alliances with armed groups and the provision of protection for perpetrators following transitions from conflict and authoritarianism.⁸⁷ There is a strong relationship between organized crime and terrorism, demonstrated in particular in the Sahel region.⁸⁸ Furthermore, these groups engage in environmental crimes, such as trafficking wildlife and natural resources.⁸⁹

41. The clear and interrelated relationship between corruption and transitional justice requires a closer examination. Therefore, the Special Rapporteur intends to conduct a global study on corruption in transitional justice contexts and develop a set of best practices for how transitional justice mechanisms should incorporate accountability for and prevention of corruption. Relatedly, given the role that organized crime plays in perpetuating violence and inequalities in transitional justice contexts, the Special Rapporteur intends to study how it can be effectively integrated into transitional justice mechanisms, especially to advance the goals of accountability and non-recurrence.

3. Challenges of negationism, revisionism and politicization in transitional justice contexts

42. The Special Rapporteur intends to build on the important work of the previous mandate holders on truth, memorialization and guarantees of non-recurrence to address the rising challenges of negationism, revisionism and politicization in the context of transitional justice.

43. The right to the truth is both a collective and an individual right; accordingly, each victim has the right to know the truth about violations that affected him or her, but the truth also has to be told at the level of society as a “vital safeguard against the recurrence of violations”, as stated in principle 2 of the set of principles for the protection and promotion of human rights through action to combat impunity.⁹⁰ Similarly, Principle 3 of this instrument specifies that the State has a correlative “duty to preserve Memory”, inter alia because “[s]uch measures shall be aimed at preserving the collective memory from extinction and, in particular, at guarding against the development of revisionist and negationist arguments.”

44. In 2022, the General Assembly expressed deep concern over the rise in Holocaust denial and the role social media has played in spreading misinformation and disinformation that supports such denialism.⁹¹ The previous mandate holders also highlighted the dangerous potential of the manipulation of information regarding grave human rights and humanitarian law violations to encourage violence, retraumatize victims and overall undermine the aims of transitional justice, including in some of their country visit reports.⁹² Experts have reiterated these concerns,

⁸⁵ See www.unodc.org/e4j/en/organized-crime/module-4/key-issues/links-to-corruption.html.

⁸⁶ See www.unodc.org/documents/data-and-analysis/tocta/TOCTA_Report_2010_low_res.pdf, pp. ii and v.

⁸⁷ See https://www.ictj.org/sites/default/files/ICTJ_Report_Overview_TJ_Prevention.pdf, p. 10.

⁸⁸ See www.visionofhumanity.org/wp-content/uploads/2024/02/GTI-2024-web-290224.pdf, p. 51.

⁸⁹ See www.unodc.org/documents/toc/factsheets/TOC12_fs_environment_EN_Plain.pdf.

⁹⁰ E/CN.4/2005/102/Add.1.

⁹¹ See General Assembly resolution 76/250.

⁹² See A/HRC/51/34/Add.2; A/HRC/51/34/Add.1, A/HRC/54/24/Add.2; A/HRC/45/45/Add.1; and A/HRC/27/56/Add.2.

including one identifying denialism in the context of genocide to be a part of the crime itself and one of the clearest signs of future genocidal violence.⁹³ Generative artificial intelligence threatens to exacerbate misinformation and disinformation challenges, both by creating realistic fake content and effectively facilitating the dissemination of disinformation to a targeted audience and at scale by malicious stakeholders.⁹⁴ Given these trends, the previous mandate holder called for the full repudiation of regressive forms of memorialization such as negationism and the promotion of progressive memorialization practices that reflect contemporary human rights perspectives, which he identified as both a human rights obligation and a critical support for non-recurrence.⁹⁵

45. However, legal responses to negationism, revisionism and politicization, including the “gross trivialization or condoning,”⁹⁶ have been varied and controversial, owing to the tension that it creates between important rights, freedoms and duties – to expression and opinion, privacy, non-discrimination, life, and the preservation of memory,⁹⁷ among others. The Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance has noted that denialism and other types of distortion of history often rely on extreme racial, religious or other forms of discrimination and should therefore not be protected under the right to freedom of expression and opinion.⁹⁸ To steer State practices around this complex issue while ensuring the protection of all human rights, the former Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence called on States to follow the valuable guidance contained in the Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence to ensure the respect of relevant human rights.⁹⁹ Relatedly, the Committee on the Elimination of Racial Discrimination recommended that public denials or attempts to justify crimes of genocide and crimes against humanity, as defined by international law, should be declared as offences punishable by law, provided that they clearly constitute incitement to racial violence or hatred.¹⁰⁰ International and regional laws and jurisprudence are not entirely consistent on this matter, but they tend overall to follow the Committee’s recommendation for penalization for negationism and revisionism in extreme cases.¹⁰¹ The Special Rapporteur intends to review the various frameworks that have been implemented, clarify States’ legal obligations, and recommend best practices regarding punitive legal responses to these trends.

46. In addition, the Special Rapporteur will examine the best strategies for implementing the non-punitive tools that transitional justice offers to combat negationism, revisionism and politicization, including truth commissions and memorialization and education efforts, such as building memorials, history teaching about past gross human rights violations, establishing curricula around the events, incorporating media and information literacy content in formal education to mitigate misinformation, giving a privileged voice to victims in the construction of memory,

⁹³ The Special Rapporteur noted that the failure of Bosnia and Herzegovina to establish a truth-seeking commission has exacerbated revisionism. [A/HRC/51/34/Add.2](#), para. 32.

⁹⁴ See www.cambridge.org/core/journals/data-and-policy/article/role-of-artificial-intelligence-in-disinformation/7C4BF6CA35184F149143DE968FC4C3B6, at 1.

⁹⁵ See [A/HRC/45/45](#).

⁹⁶ See https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4344252, p. 226.

⁹⁷ On the duty to preserve memory, specifically to combat revisionism and negationism, see [E/CN.4/2005/102/Add.1](#).

⁹⁸ See [A/HRC/26/50](#).

⁹⁹ See [A/HRC/45/45](#), para. 80.

¹⁰⁰ Committee on the Elimination of Racial Discrimination, general recommendation No. 35 (2013) on combating racist hate speech, para. 14.

¹⁰¹ See https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4344252, pp. 228–229.

designating commemorative national days and socializing the findings of truth commissions or criminal courts through cultural initiatives and the media. The previous mandate holder identified Canada and Sierra Leone as offering positive examples of progressive memorialization practices through programmes promoting societal reflection on the past.¹⁰²

47. The Special Rapporteur therefore aims to conduct a global study of instances and consequences of negationism, revisionism and politicization in the context of transitional justice. Using this study, the Special Rapporteur intends to develop a comprehensive strategy for combating these trends, including through progressive memorialization measures relating to national education and the proper regulation of news, social media and emerging technologies that otherwise may serve to amplify misinformation, such as artificial intelligence.¹⁰³ In developing this strategy, the Special Rapporteur will work closely with experts and other mandate holders to delineate carefully between speech protected under the freedom of expression and unacceptable forms of negationism, revisionism and politicization.

4. Transnational transitional justice, including following contexts of international armed conflicts

48. Many aspects of transitional justice arose out of the Nuremberg trials – transnational efforts to pursue accountability in the wake of a devastating international armed conflict.¹⁰⁴ In line with that legacy, the previous mandate holders have engaged in numerous country visits¹⁰⁵ and communications¹⁰⁶ to States currently or previously involved in international armed conflicts. However, limitations on the conduct of special procedure mandate holders have restricted their capacity to holistically address inter-State situations during visits, unless conducted simultaneously to all parties to the conflict.¹⁰⁷ Consequently, certain cross-border actions or opportunities for collaboration have been insufficiently addressed despite the important role they could play in pursuing more comprehensive truth, justice, reparation, memorialization and guarantees of non-recurrence. With multiple international armed conflicts ongoing in the world, the review and development of general best practices for transitional justice in transnational contexts – namely, but not limited to, international armed conflicts – is essential.

49. International armed conflicts encompass a range of unique difficulties that justify further attention, including the potential lack of a political transition,¹⁰⁸ broader scope of harms, challenges with attribution of responsibility, multiple levels of weak institutions and lack of clarity on the legal frameworks around non-State

¹⁰² See A/HRC/45/45, para. 61.

¹⁰³ The intersection of transitional justice and emerging technologies is discussed more fully as a priority for the mandate in the Special Rapporteur's report to the Human Rights Council (A/HRC/57/50).

¹⁰⁴ See https://digitalcommons.nyls.edu/cgi/viewcontent.cgi?article=1325&context=fac_articles_chapters, p. 1631.

¹⁰⁵ See, e.g., A/HRC/54/24/Add.1; A/HRC/54/24/Add.2; A/HRC/51/34/Add.2. See also www.ohchr.org/sites/default/files/documents/issues/truth/statements/20231124-eom-armenia-sr-truth-en.pdf.

¹⁰⁶ See, e.g., SRB 1/2014; BIH 2/2014; ITA 2/2015; MAR 3/2015; PAK 4/2015; PRT 1/2015; USA 12/2015; JPN 1/2016; KOR 2/2016; PHL 15/2017; GBR 11/2018; BIH 1/2020; USA 15/2020; RUS 8/2023; OTH 18/2023. Available from <https://spcommreports.ohchr.org/Tmsearch/TMDocuments>.

¹⁰⁷ For example, the Special Rapporteur mentioned the exchange of prisoners of war and the necessity to increase Armenia-Azerbaijan cooperation in locating bodies on one another's territories. See www.ohchr.org/sites/default/files/documents/issues/truth/statements/20231124-eom-armenia-sr-truth-en.pdf.

¹⁰⁸ See https://www.researchgate.net/publication/291242444_Reassessing_the_Boundaries_of_Transitional_Justice_An_Inquiry_on_Political_Transitions_Armed_Conflicts_and_Human_Rights_Violations, p. 210.

participants.¹⁰⁹ International armed conflicts also present challenges that overlap with the other themes presented in the present report, including emerging technology and transitional justice dynamics between the global North and South. Today, advancements in technology have altered the ways in which cross-border conflicts take place, greatly increasing the damage that can be done remotely through uncrewed weaponry and cyberattacks. In previous and current international armed conflicts, the influence and harms of colonialism and the implications of exercising the right to self-determination have yet to be sufficiently addressed by transitional justice. Furthermore, the disintegration and merger of certain States as a result of armed conflict, as well as the intervention of the international criminal justice system, have challenged the practicality of the nation-State as the primary focus when organizing transitional justice processes.¹¹⁰

50. Notably, however, the Special Rapporteur's exploration of transnational transitional justice will not be limited to international armed conflicts; other forms of serious human rights and humanitarian law violations are conducted and have impacts felt across borders. For instance, certain measures adopted by the Soviet era eastern bloc in Europe and Operation Condor in South America represent instances of internationally coordinated repression. Similarly, alliances such as in the war on terror and bilateral security agreements have also implicated transnational human rights violations.¹¹¹ Furthermore, the intersections of migration and climate change – explored in greater depth above – present emerging transnational challenges.

51. Despite the existence of this range of transnational harms, transitional justice mechanisms have traditionally been State-centric. Most peace agreements and accountability processes are formulated for individual States, fragmenting the pursuit of justice.¹¹² Domestic criminal justice systems frequently limit their scope to crimes committed within the State's territory or to its citizens. Meanwhile, other realities, such as environmental violations and forced migration, are often made invisible and excluded from transitional justice processes. For example, in some instances where truth commissions entailed ample consultation with victims and addressed forced migration, those displaced struggled to participate and express their needs and demands during the process.¹¹³ By preserving nationally focused transitional justice strategies, the impunity gap is exacerbated and victims face increasing obstacles in obtaining truth, justice and reparations¹¹⁴ – all of which heightens the risk of a future return to violence or abuse.

52. Accordingly, the Special Rapporteur intends to build on the work of previous mandate holders by conducting a global study to assess the challenges, opportunities and lessons learned regarding transitional justice in relation to international armed conflicts and other transnational contexts. On the basis of those observations, he intends to create recommendations for how transitional justice mechanisms under all the pillars can be applied most effectively to address serious transnational violations of human rights and humanitarian law and foster inter-State reconciliation. These mechanisms will include but are not limited to international courts and tribunals, cooperation in domestic criminal proceedings, exchange of archives and forensic information, transnational reparations programmes, cross-border truth-seeking

¹⁰⁹ See https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2939815, p. 1.

¹¹⁰ See <https://academic.oup.com/ijtj/article/11/1/1/3059851>, p. 1.

¹¹¹ A/HRC/48/57, paras. 38–60.

¹¹² See <https://ir.lib.uwo.ca/cgi/viewcontent.cgi?article=1007&context=tjreview>, p. 5.

¹¹³ See <https://gijtr.org/wp-content/uploads/2022/05/Gambia-Forced-Migration-and-TJ-Case-Study-October-2021-EN-final-1.pdf>.

¹¹⁴ A/HRC/36/39/Add.2.

bodies, public statements and post-conflict negotiations, including matters such as prisoner exchanges and territorial division.

53. Notably, considerations of transnational transitional justice, especially in the context of non-international armed conflicts that are internationalized, or that escalate to international armed conflicts must not be limited to discussions of the roles and responsibilities of the immediate States involved, but also other States involved, either in exacerbating violence through methods such as the provision of military aid, or in promoting peace and accountability through strategies such as assistance in peace negotiations and the initiation of international, regional and domestic court cases.¹¹⁵ For that reason, the Special Rapporteur aims to clarify what contributions States with these forms of secondary involvement ought to make in transitional justice processes.

54. Relatedly, the Special Rapporteur's examination of transnational contexts will further consider the role and responsibilities of non-State actors in transitional justice processes and responses,¹¹⁶ including United Nations bodies, regional institutions, civil society organizations, non-State armed groups,¹¹⁷ including terrorist organizations, and transnational corporations – all of which have a critical influence over the facilitation of abuses and promotion of transitional justice. Therefore, the Special Rapporteur intends to formulate specific recommendations for the role that non-State actors should play in transnational transitional justice mechanisms.

5. Implementation of transitional justice in early stages of transition

55. Transitional justice measures are generally designed to address serious violations of human rights and humanitarian law after a society has transitioned out of armed conflict or authoritarian rule. However, as has been discussed by scholars, transitions are not a neat point in time; rather, transitions are long, intricate processes and transitional justice often happens as they unfold.¹¹⁸ The decisions that occur early on in transitions have immense influence over the fate of the State, including the existence, nature and perception of future transitional justice. It is therefore important to the mandate holder's goals to consider how designing and implementing transitional justice mechanisms at an earlier stage in the transition process could increase its efficacy.

56. For example, peace negotiations offer a critical opportunity to lay the groundwork for strong transitional justice later on, including by detailing when and which transitional justice mechanisms will be implemented.¹¹⁹ However, decisions made during negotiations may later be found to be in contravention of transitional justice aims or standards, but unlikely to be the object of reform late in the process. The establishment and reform of laws and government bodies and practices similarly can shape if and how transitional justice occurs. These changes could range from positive steps that should be encouraged – such as creating new truth-seeking bodies and special prosecutorial powers over crimes that occurred during the period of conflict or authoritarian rule – to detrimental steps that detract from the aims of transitional justice and encourage impunity, like amnesty laws. Under the pillar of guarantees of non-recurrence, institutional reform is itself a form of transitional

¹¹⁵ See, for example, joint allegation letters SAU 6/2023 and ARE 2/2023.

¹¹⁶ [A/HRC/51/34](#).

¹¹⁷ See, for example, joint allegation letter OTH 100/2023.

¹¹⁸ See www.europarl.europa.eu/meetdocs/2004_2009/documents/fd/droi20060828_definition_/droi20060828_definition_en.pdf.

¹¹⁹ For example, the Revitalized Peace Agreement in South Sudan has a chapter dedicated to transitional justice mechanisms including a hybrid court, a truth commission and a reparations programme. See <https://docs.pca-cpa.org/2016/02/South-Sudan-Peace-Agreement-September-2018.pdf>.

justice and should be pursued with that reality in mind, especially in post-conflict settings with weak institutions.¹²⁰ All adjustments to the governance structures and practices of a State should be responsive to the needs of victims and the root causes of the abuses that occurred. Early engagement of these actors and discussions on these topics can make the process more effective and sustainable.

57. Additionally, the early collection, preservation and prevention of destruction of evidence surrounding serious violations of international human rights and humanitarian law – including while violations are ongoing – advances all five transitional justice pillars. For justice, these steps will support accountability efforts by providing investigators and prosecutors with the identities of perpetrators and details of their crimes. For truth, strong documentation and early collection of testimonies of victims and witnesses will support truth-seeking initiatives and help fill gaps in the narrative, such as by revealing the fate of victims of enforced disappearance; this information in turn will provide verification of the status and category of victims requiring reparations, which will inform the size and type of reparation programmes to be envisaged. For memorialization, the evidence collected can be transformed into archives and inform other memorialization strategies, including through the identification of victims and sites of grave abuses. For guarantees of non-recurrence, that same evidence can be used to vet public officials and employees. Similarly, accounts of victimhood can be used in future educational and cultural initiatives to inform society about past violations and their impact on society.

58. Given the importance and potential of the early stages of transition, the Special Rapporteur intends to better understand how transitional justice mechanisms can be both planned and implemented at these stages to ensure that the goals of truth, justice, reparation, memorialization and non-recurrence are pursued as effectively as possible. He aims to use this study to inform recommendations for when, how and what types of mechanisms should be incorporated early in transitions.

59. As detailed in the Special Rapporteur's concurrent report to the Human Rights Council ([A/HRC/57/50](#)), and as emphasized by the former mandate holders and the Secretary-General,¹²¹ a bottom-up, context-specific approach to transitional justice is essential to its success. Consequently, another question that should be considered in the early stages of a transition is how victims, as well as the general population, can sufficiently participate in the design of transitional justice policies and bodies. Furthermore, international intervention and involvement in transitional contexts is common.¹²² Accordingly, the question of timing is not only important for the States undergoing transition, but also for international actors, including the United Nations and Governments, who intend to support transitional justice through financial and/or technical assistance on the ground or external action such as prosecutions through universal jurisdiction. Accordingly, the Special Rapporteur will consider the best practices for early victim, civil society and international engagement in transitional justice.

B. Transversal transitional justice issues of a legal, methodological, procedural and technical nature

60. In addition to the broader substantive and policy-related issues described above, the Special Rapporteur also intends to examine and address several transversal issues

¹²⁰ See generally [A/HRC/36/50](#).

¹²¹ See www.ohchr.org/sites/default/files/documents/issues/transitionaljustice/sg-guidance-note/2023_07_guidance_note_transitional_justice_en.pdf; and [A/77/162](#).

¹²² See www.jstor.org/stable/20486740.

of a legal, procedural, methodological and technical nature that are more intrinsically linked to the functioning of the mandate, and thus of greater relevance for the interactive dialogue undertaken annually with members of the Human Rights Council. As detailed in his above-mentioned report to the Council, the Special Rapporteur intends to explore the following five transversal transitional justice issues of a legal, methodological, procedural and technical nature: (a) documentation of gross violations of human rights and serious violations of international humanitarian law occurring in conflicts or authoritarian rule; (b) transdisciplinary approaches to transitional justice; (c) transitional justice responses to intergenerational and other long-term impacts of gross human rights violations; (d) emerging technologies in the context of transitional justice; and (e) bottom-up, global South-North approaches to transitional justice.

1. Documentation in the context of transitional justice processes

61. The right to truth and memory creates not only an obligation on States to present facts related to gross violations of human rights and serious violations of international humanitarian law during conflicts or authoritarian rule, but also a legal duty to ensure a thorough documentation and review of all alleged violations. Additionally, the comprehensive investigation, preservation and presentation of these types of violations is essential to the successful implementation of transitional justice mechanisms and supports efforts to prevent the recurrence of violence and authoritarian rule. Yet, as noted by previous mandate holders, these processes have faced serious obstacles, including the insufficient mapping or registration of such violations; inadequate efforts to gather testimonies from victims and witnesses who wish to come forward; the absence or obstruction in gaining access to official archives documenting the violations suffered by victims; the lack of transparency of documentation processes; the inadequate preservation and archiving of documentary and testimonial evidence; and the lack of support to civil society initiatives aimed at gathering testimonies from victims and documenting violations. Furthermore, documentation approaches have often excluded marginalized groups and socioeconomic harms, leading to the creation of incomplete narratives about historical abuses. Therefore, the Special Rapporteur intends to study the existing practices, jurisprudence and legal and regulatory frameworks around documentation at the national, regional and international levels. He will use that assessment to develop best practices to achieve comprehensive, inclusive documentation that fulfils States' international legal obligations and adequately supports transitional justice processes.

2. Transdisciplinary approaches to transitional justice

62. The increasingly diverse and complex contexts demanding transitional justice require a transdisciplinary approach – defined as translating academic interdisciplinarity into the development of real-world knowledge and practice to generate societal change – that looks beyond a strict legal perspective. To effectively address the wide range of actors, harms, rights and mechanisms at play in transitional justice, such an approach must draw upon an equally wide range of disciplines across the social sciences, natural and applied sciences, the arts and humanities. In order to ensure that transitional justice is victim-centred, special attention must be paid to critical studies on race, ethnicity, gender, sexuality and more, which offer an insight into how various identities intersect and how serious violations of human rights and humanitarian law are experienced. According to experts, plenty of scholarship on transitional justice exists across a broad range of disciplines, but it needs to be effectively and genuinely integrated into transitional justice practice and policy. In addition, innovative multidisciplinary responses to transitional justice challenges that have emerged in different country contexts, some spearheaded by civil society, lack

sufficient attention or support. Consequently, the Special Rapporteur intends to complete a review of the existing literature, draw from practical experiences in countries and from practices examined under the mandate, and speak with a broad range of United Nations bodies, regional and government experts, civil society actors and scholars to better understand how to effectuate the existing knowledge to create a truly transdisciplinary approach to transitional justice.

3. Transitional justice responses to intergenerational and other long-term impacts of gross human rights violations

63. The Secretary-General has emphasized the importance of integrating a transgenerational perspective into transitional justice policies and mechanisms. The grave, and often collective, violations of human rights and humanitarian law that arise from armed conflict and authoritarian rule provide fertile ground for intergenerational trauma. Atrocities also frequently lead to the intergenerational distortion and manipulation of memory as violations are recounted and memorialized, which can fuel this type of trauma and reproduce destructive patterns of discrimination, hatred and other tensions that could provoke the recurrence of violence. Therefore, transitional justice needs to be responsive to these forms of intergenerational harms and risks, including by effectively engaging young people as agents of change and key prevention actors, engaging older generations in education and preventive efforts and facilitating intergenerational collaboration between young and older persons to advocate and advance transitional justice processes that affect them. The Special Rapporteur intends to examine intergenerational and other forms of long-term impacts in the wake of armed conflict and authoritarian rule in order to develop recommendations for how transitional justice can adequately incorporate an intergenerational approach to respond to these types of lasting harms.

4. Emerging technologies in the context of transitional justice

64. The rapid advancement of technology since transitional justice was first envisioned carries both positive and negative potential for the field. On the one hand, technological progress in areas such as artificial intelligence, weapons systems and surveillance technology has increased the efficiency and brutality of the perpetration of gross violations of human rights and serious violations of international humanitarian law. These technologies also ease the spread of disinformation and have allowed for the proliferation of harmful forms of expression, such as extreme nationalism that can encourage grave violations of international law, as well as denialism and revisionism in the aftermath of such violations. On the other hand, ongoing developments have led to improvements in open-source information, open-source intelligence, forensic analysis and mapping and satellite technologies, among others, which have revolutionized human rights investigations. Additionally, modern technology offers increased accessibility to transitional justice processes, such as through remote participation in trials and truth commissions. Therefore, regulating the use of new technologies in compliance with human rights standards, ensuring due diligence by new technology companies and promoting technological and media literacy are increasingly relevant focus areas for transitional justice processes. In response to both the negative and positive implications of emerging technologies on transitional justice, the Special Rapporteur intends to undertake a study on how technology can serve the promotion of transitional justice and prevention of atrocity crimes, as well as how emerging technologies facilitate grave human rights violations, where there are gaps in existing regulatory frameworks that promote impunity for such violations and what role transitional justice can play in responding to these abuses and gaps.

5. Bottom-up, global South-North approaches to transitional justice

65. As has been emphasized by the previous mandate holders and the Secretary-General, effective transitional justice is dependent on a victim-centred approach, and meaningfully centring victims requires the creation of transitional justice mechanisms and methods of participation that are responsive to all victims' history, identity, needs, ability, and historical, political and cultural context. The success of transitional justice processes requires wide community ownership. The more active the engagement (and effective the influence) of civil society, grass-roots organizations and victims in the design and implementation of transitional justice processes, the more sustainable they will become. To achieve this model, transitional justice processes must implement a bottom-up, global South-North approach that incorporates local voices, practices and philosophies, including from the global South, rather than solely relying on systems sometimes perceived to be imposed by States and international organizations, or imported from the global North. Full inclusivity is key, and the participatory methods employed should be accessible and appealing to all affected communities, including those who have historically been excluded from political processes, such as Indigenous peoples and minority groups. Similarly, as has been shown in a variety of contexts, it is also essential that women and women's groups have ownership and influence over transitional justice processes. Therefore, the Special Rapporteur intends to study the best practices and develop recommendations regarding bottom-up, context-specific approaches to transitional justice that draw on global South systems. These recommendations will include strategies for the United Nations and other international actors to identify relevant civil society partners and to engage affected communities in a meaningful and safe way.

IV. Conclusions and recommendations

66. The Special Rapporteur will seek to build on the work of the two previous mandate holders to further develop the mandate by continuing to refine the guidance in the fields of truth-seeking, justice, reparation, guarantees of non-recurrence and memorialization, as well as proposing strategies to meet the current challenges in the field of transitional justice. The Special Rapporteur will also pursue the integration of transitional justice policies across the entirety of the United Nations' relevant goals and work, including on development, peace and security.

67. The Special Rapporteur intends to establish victim-centred and comprehensive approaches to transitional justice that are grounded in international legal principles, responsive to the evolving nature of human rights challenges in contemporary society and rigorously informed by the said victim-centred approach, gender perspectives and the input of other historically marginalized populations.

68. The Special Rapporteur has established the priority areas of study and intervention for the next six years of his mandate, as well as his main lines of engagement with the General Assembly and the Human Rights Council.

69. In reporting to the General Assembly, the Special Rapporteur aims to highlight some of the major substantive and policy issues in transitional justice that affect the international state of human rights, rule of law, development, as well as peace and security. These will include: (a) economic, social, and cultural rights in the context of transitional justice; (b) transitional justice responses to mass human rights violations, including: (i) terrorism and counterterrorism; (ii) mass displacement and migration; (iii) climate change and environmental harms; and (iv) corruption and organized crime; (c) challenges of negationism,

revisionism and politicization in transitional justice contexts; (d) transnational transitional justice, including following contexts of international armed conflicts; and (e) implementation of transitional justice in earlier stages of transitions.

70. In reporting to the Human Rights Council, he intends to focus on transversal transitional justice issues of legal, methodological, procedural and technical nature, which can inform States, as well as United Nations experts and bodies. These will include: (a) documentation of gross violations of human rights and serious violations of international humanitarian law occurring during conflicts or authoritarian rule; (b) transdisciplinary approaches to transitional justice; (c) transitional justice responses to intergenerational and other long-term impacts of gross human rights violations; (d) emerging technologies in the context of transitional justice; and (e) bottom-up, global South-North approaches to transitional justice.

71. In preparation for these reports, the Special Rapporteur intends to conduct desk research, open consultations and expert meetings that will help him analyse inputs from various actors, monitor current trends and practices and assess their compliance with international standards on transitional justice. He calls on States and other stakeholders to collaborate with these processes.
